LEGAL DICTATION

BEALE

...BOOK OF...

LEGAL DICTATION

Compiled from Actual Work, for the use of Teachers and Students of Shorthand

BY CHARLES CURRIER BEALE

Official Stenographer of Massachusetts Superior Court

SECOND EDITION REVISED AND ENLARGED

BOSTON, MASS.
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To ENOCH N. MINER, Esq.,

To whose patience, persistency, and perseverance the shorthand profession of America owes more than it can ever repay, and whose constant loyalty to the phonographic fraternity "through thick and thin" has brought him, not as much wealth as he deserves, but the cordial appreciation and friendship of stenographers everywhere, this book is dedicated, with the hearty good wishes of the author.

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INTRODUCTION.

In putting before the public the second edition of this work, it seems to the compiler and the publishers, that the fact that a second edition is required shows that there is a need and a demand for such a work. To those who have not hitherto used the book it will speak for itself, and it is believed that those who have used it in the past will find it in its present form greatly improved, especially by the addition of a larger number of actual court papers (commonly termed "pleadings") which in most law offices are dictated to and typewritten by the stenographer. To make these more helpful they have been arranged in the same style as they would be typewritten, and examples of the "backings" given in many cases. The compiler wishes to express his thanks to the several law stenographers and attorneys who have kindly assisted him by contributing various papers for publication in this book, and especially to Samuel W. Mendum, Esq., of the Boston Bar. With the hope that the book will be still more useful in the future than its kind friends have claimed it to be in the past, it is offered again to the shorthand teaching and typewriting public.

THE COMPILER.

LEGAL CORRESPONDENCE.

NOTE—The following collection of lawyers' letters embraces a great variety of legal topics, and contains a considerable vocabulary of words used in lawyers' dictation. The abbreviation *v.* is pronounced usually *against,* although it may be rendered by *versus,* or simply pronounced as the letter *v.* The expression *and* is often used in place of *v.* or *vs.*; thus, "The case of Black and White," meaning, "The case of Black *vs.* White." In stating the number of words in each letter, the address and closing expressions are included, but *not* the dateline. Numerals are estimated as being the least number of spoken words required to express them; as 1899=eighteen ninety-nine (three words); $25.18= twenty-five dollars eighteen cents (five words.) The date in the first half of the letters is given as Boston in each case; but in the second half a variety of localities is given.

Boston, Mass., Dec. 7, 1899.

Mr. William White,
35 Summer St., Boston, Mass.

Dear sir:—

Confirming what I told you in the Court House yesterday, I say in writing that if the Nantucket Bank presents its claim to the receivers of J. Scott & Son, I shall, early in March, move that the claim be paid in full without interest. This of course is in reliance upon the statement that the bank bought the note before maturity from the broker without notice of the circumstances under which the name of J. Scott & Son was affixed to it. I wish all unquestioned debts of J. Scott & Son, paid at earliest possible moment.

Very truly yours, (112 words)

Boston, Mass., Nov. 13, 1899.

Mr. Henry F. Leonard,
Lawrence, Mass.
Dear sir:—

You sent me ten dollars for disbursements made by Kelley. This turned out to be one dollar less than he had actually paid. Will you kindly send me a dollar, and close the account?

Very truly yours, (45 words)

Boston, Mass., Dec. 7, 1899.

Mr. Henry Barber,
23 Court St., Boston, Mass.
Dear sir:—

Mr. Bell has just handed me the enclosed interlocutory decree in Grimes v. Richards. We notice that you have inserted the words "Receivers for this purpose to." We should very much prefer not to have those words inserted, unless you think the plaintiff will suffer if they are omitted. Neither Mr. Wiley nor Mr. Greenleaf suggested these words when the decree was under consideration, and for certain reasons we dislike the idea of having the receivers appointed. Trusting you will think it proper to strike out these words, I am,

Very truly yours, (104 words)

Boston, Mass., Nov. 23, 1899.

Mr. Henry F. Knight,
So. Berwick, Me.
Dear sir:—

Mr. James, who as you remember, is Mr. Turner's lawyer, writes me that Mrs. Turner has some things in storage in this city, but she is too poor to pay the storage charges and the cartage. She will, however, return them, if you will pay the charges and cartage, and will upon their return, send the jewelry to her, at the end of six months, if she did not in the meantime, annoy you at Portland. Above all things, I wish to keep every engagement that I make, and do not wish any lawyer or other man either, to be able to say that I ever failed to do what I have promised. I shall consider it a personal favor, if you will let this jewelry go. It is, I think, of no value.

Very truly yours, (146 words)

Boston, Mass., Nov. 11, 1899.

Mr. Charles Armstrong,
Springfield, Mass.
Dear sir:—

I received your letter of March 18, saying that you had executed the release and forwarded it to Mrs. Kidder, have not received it from her.

Yours truly, (35 words)

Boston, Mass., Dec. 6, 1899.

Mr. William Anthony,
45 High St., Boston, Mass.
Dear sir:—

I send you waiver of Alexander Porter and Brother, to deposit in case Arthur v. Clarke, and an order to you to collect. Please acknowledge receipt and oblige,

Very truly yours, (42 words)

Boston, Mass., Nov. 15, 1899.

Mr. Howard Chase,
Beverly, Mass.
Dear sir:—

Enclosed please find the following papers: Report and objections; request for finding; a bill; the notes, checks, account, and other exhibits introduced before me at the hearing on the last reference.

Yours truly, (40 words)

Boston, Mass., Nov. 29, 1899.

Mr. Oliver Crane,
Fall River, Mass.
Dear sir:—

Is not the claim of F. E. Bennett & Co., brought against the insolvent estate of Osgood & Pray? If so, what more is there to be done? There is no necessity in that case of waiving the deposit of the defendant. It is the duty of the registrar to pay.

Very truly yours, (62 words)

Boston, Mass., Nov. 27, 1899.

Mr. William R. Rogers,
15 Winter St., Boston, Mass.
Dear sir:—

I have today collected twenty-five dollars from Mrs. Adams, and have delivered the lease which I have received two or three days ago from Mrs. Jones. I have sent a check, as you requested, to the First National Bank, of Portland, Oregon, to the credit of the estate of James R. Jones. I have not delivered the promissory note, but have brought a suit, and an attachment, which I hope will enable me to collect more from Adams.

Very truly yours, (93 words)

Boston, Mass., Nov. 29, 1899.

Mr. William French,
94 Washington St., Boston, Mass,
Dear sir:—

Enclosed you will please find account as administrator of the estate of your father. You will notice that I have treated all personal property not disposed of, as cash, and have made a distribution upon that basis. If there are no mistakes in this account, will you have your brothers and sisters assent to the account on the first page, and return it to me, and I will have it allowed. As soon as the account is allowed, you had best, as I suggested this morning, make a written deposition that you hold shipping and other property not disposed of, in trust for your brothers and sisters.

Yours truly, (121 words)

Boston, Mass., Nov. 29, 1899.

Mr. Horace Hill,
19 South St., Boston, Mass.
Dear sir:—

I have received a check from Abijah Jackson, attorney, to whom your claim against Gunn was sent. He settled for sixty-two dollars, and made a charge of three dollars. I charge one dollar for my services, and send a check for fifty-eight dollars.

Very truly yours, (59 words)

Boston, Mass., Dec. 4, 1899.

Mr. Henry Smith,
87 Tremont St., Boston, Mass.
Dear sir:—

Sign the enclosed petition, then step to the telephone and acknowledge it before me, and mail it back at your earliest convenience.

Very truly yours, (36 words)

Boston, Mass., Nov. 27, 1899.

Mr. Henry T. Miller,
48 Bromfield St., Boston, Mass.
Dear sir:—

Enclosed you will please find my check for twenty-one hundred dollars, which you will please place to the credit of the estate of James A. Jones. This is the proceeds of the collection upon the amount due the estate; and I forward the amount due the estate, and I forward the money to you by the directions of Mr. A. R. Burt, one of the executors. Please acknowledge receipt and return.

Yours truly, (86 words)

Boston, Mass., Nov. 29, 1899.

Mr. Frank Hall,
28 School St., Boston, Mass.
Dear sir:—

I have just had a conversation with Mr. Atkinson about the affairs of H. A. Hallett. Mr. Atkinson informs me that he expects Mr. Baker will be able to effect a settlement with the creditors of the Hallett estate, that if he does so he will release you from all outside claims, and by outside claims, he means all claims excepting your personal notes which you gave Charles Hallett at the time of the dissolution of the firm. Mr. Atkinson also assures me that Mr. Baker will make no disposition of the notes without giving you or me reasonable notice of intention so to do, so that you can take action to prevent them from passing into the hands of innocent third parties. For certain reasons, Mr. Baker does not care to sign an agreement in writing, but Mr.

Atkinson makes this statement after talking with Mr. Baker, and I have dictated this letter in Mr. Atkinson's presence, so that we may be sure that our minds completely meet in this matter. You can, I think, rest entirely easy now in this matter. I certainly advise you to do nothing at present.

Very truly yours, (206 words)

Boston, Mass., Dec. 4, 1899.

Mr. Frank L. Rogers,
Somerville, Mass.
Dear sir:—

I have heard nothing from Mrs. George. Something should be done before a great while, and I would like to know who is to be appointed administrator of your father's estate, as I am trying to arrange a settlement of the Collins suit.

Very truly yours, (54 words)

Boston, Mass., Dec. 4, 1899.

Mr. Robert Downing,
76 Summer St., Boston, Mass.
Dear sir:—

You returned my bill of July 1, and asked me what was the first item. It was for the consultation about those two contracts. I first made a rough draft, which was subsequently changed. There were more than two interviews about this contract. I made a charge of twelve dollars for the whole. Duplicate bill enclosed. You also asked about the first item of my bill to the firm. That was for consultation about the insurance on Salem property.

Very truly yours, (93 words)

Boston, Mass., Dec. 4, 1899.

Dr. William Grant,
95 Court St., Boston, Mass.
Mear sir:—

The insurance policies have been transferred to Mr. Douglass. He should pay you $135.83. He called here Wednesday, and said he could not pay cash, and wished to see you about it.

Very truly yours, (53 words)

Boston, Mass., Dec. 4, 1899.

Mr. Frank L. Kimball,
23 Court St., Boston, Mass.
Dear sir:—

I have your note of yesterday, saying you are satisfied that the Mechanics' National Bank holds the notes described in the letter sent to you, and that it has presented its claim to the receivers under order of the court. I have asked Mr. Curtis to present the notes to you, so that you may see that they are all perfectly straight. My only desire is that there may be no misunderstanding. I have not yet been able to ascertain just what claim you think had been presented to the receivers.

Yours truly, (105 words)

Boston, Mass., Dec. 5, 1899.

Mr. Henry Folger,
267 Columbus Ave., Boston, Mass.
Dear sir:—

Mr. Lowell has brought me the insurance policies, four in number; all made payable to your order. You should pay for one, $43.50; for another, the same amount; the third, $7.50: and for the fourth, $32.00; which is the value of the policies for the unexpired term. The first three policies expire on the 22d of April, 1903, and the last, Dec. 4, 1901.

Very truly yours, (94 words)

Boston, Mass., Dec. 4, 1899.

Mr. Henry Fuller,
18 St. Botolph St., Boston, Mass.
Dear sir:—

Mr. Brown will give two notes, one for three months, the other for six months, each for one hundred and fifty dollars, with interest at six per cent., endorsed by both of his sons-in-law, in settlement of the account. Jordan, one of the sons-in-law, called today, and he says he has real property in his own name, which cost six thousand dollars, assessed for four thousand, and that he has some other property. If I examine a record of Jordan's real property, it may incur quite an expense.

I think Jordan tells the truth. If, however, Mrs. Brown left unencumbered real estate, or an estate the equity of which was of much value, I should prefer not to take the notes.

Very truly yours, (139 words)

Boston, Mass., Dec. 4, 1899.

Mr. Hiram Hall,
Waverly, Mass.
Dear sir:—

I have your letter of yesterday, and notice what you say about Mrs. George's taking out letters of administration on the estate of her husband. That is all right. I should be glad to know who represents her, so that I can consult him about a settlement of the suit of Marsh and Gilchrist.

Yours truly, (63 words)

Boston, Mass., Dec. 6, 1899.

Mr. William G. Lawrence,
67 Milk St., Boston, Mass.
Dear sir:—

I thank you for the information contained in your letter of the 20th. Mr. Irish owes a friend for borrowed money, which he promised to repay at a fixed time, but has failed to keep his promise. There is no desire to oppress him, but he refuses to pay any attention to letters, or I should not have written to you.

Very truly yours, (76 words)

Boston, Mass., Dec. 6, 1899.

Mr. G. H. Jackson,
Braintree, Vermont.
Dear sir:—

I have notified Mr. James that if the Boston Security and Trust Co. presents its claim to the receivers of Jones, Scott & Sons, I shall, early in September, move the Court that the receivers be ordered to pay the face of the claim without interest or costs. I see no defence to this note, and think it best to have it paid.

Yours truly, (73 words)

Boston, Mass., Dec. 4, 1899.

Messrs. Haines & Gorman,
Salem, Mass.
Dear sir:—

Mr. Foster did not have your claim against Brown & Jones proved because he hoped to prevent the composition from going through. Attorney for the debtor will pay the money, however, without proof. I enclose two letters which I have received from Mr. Foster, and ask you to return them after reading.

Very truly yours, (63 words)

Boston, Mass., Dec. 6, 1899.

Mr. E. L. Kendall,
Brockton, Mass.
Dear sir:—

I can not say what rule the Court will adopt about allowing interest on these promissory notes. I think the proper way for you is to present your note to the receiver, and with it a statement to which will be attached a copy of the note, so that the Court may have all the facts before it.

Yours truly, (68 words)

Boston, Mass., Dec. 4, 1899.

Mr. Frank Rollins,
Melrose, Mass.
Dear sir:—

Mr. Henry Snow, as administrator of the estate of P. N. Gray, will make no distribution without a petition to the court, and an order, and in his petition he will state the kinship of the client, Mrs. Flaherty.

Very truly yours, (49 words)

Boston, Mass., Dec. 6, 1899.

Mrs. B. H. Clark,
Stoughton, Mass.
Dear sir:—

Enclosed you will please find a promissory note for $175.00, dated June 1, 1898, made by Henry Brimblecome, payable four months after date at my bank in Boston. This

is to pay the insurance policies for $37.00 each. You will remember that the indemnity policy was valued at $28.00. Mr. Brimblecome says that Mr. Boynton has taken that back to compute against its value, and that he will pay you cash for it.

Yours truly, (93 words)

Boston, Mass., Dec. 6, 1899.

Mr. Harold Lincoln,
Lowell, Mass.
Dear sir:—

I trust you will give Mr. Scott all the time you can to pay the balance due on his 1896 taxes. He has been somewhat unfortunate in business for the last two or three years, and is temporarily embarrassed. He has, however, as I know, unencumbered real estate in Brockton, which he is trying to sell, and which I am sure he will succeed in a short time in selling or borrowing money upon. You may rest assured that Mr. Scott will pay his taxes as soon as he can. I should fully appreciate any consideration you may show him.

Very truly yours, (112 words)

Boston, Mass., Dec. 7, 1899.

Mr. Peter Sterling,
53 Warren Ave., Boston, Mass.
Dear sir:—

I wrote McDonald several times, and also wrote to the firm, but neither paid any attention until I brought suit, and summoned the firm as trustee. This evidently called the matter sufficiently to Mr. McDonald's attention, for he wrote to you. There are expenses incurred which he must pay. I return McDonald's letter.

Very truly yours, (67 words)

Boston, Mass., Dec. 7, 1899.

Mr. William F. Fuller,
23 Court St., Boston, Mass.
Dear sir:—

Enclosed is a schedule of the vessel property owned by the two firms of S. Scott & Son. I understand you

think it has not been fairly inventoried, and as Messrs. Marston & Co. wish you to be fully satisfied as to that matter, I send the list. I simply request that your client, Mr. Jackson, will not advertise unnecessarily the fact of just what property Mr. Marston has.

Very truly yours, (84 words)

Boston, Mass., Dec. 7, 1899.

Mr. Henry Dobson,
579 Washington St., Boston, Mass.
Dear sir:—

Mr. Alger forwarded me your letter to him of the 25th of December, and authorized me to settle upon the basis you propose. I cannot do it, because I have already brought suit, and expenses have been incurred. If you had taken the trouble to answer my letter, all would have been right.

Very truly yours, (70 words)

Boston, Mass., Dec. 12, 1899.

Mr. James Hogg,
Somerville, Mass.
Dear sir:—

I will hear you in Mulligan and Doherty, the 27th, at ten o'clock. I go away on Tuesday for a month, and would like to arrange for hearings for Black and White in October. Please inform me by telephone, if you cannot take Mulligan and Doherty, as I have much to do, and would like to arrange for these matters if you cannot.

Yours truly, (73 words)

Boston, Mass., Dec. 12, 1899.

Mr. George Oatman,
Brockton, Mass.
Dear sir:—

Somebody from the City Hall of Lynn called upon me the other day. He presented me what he said was a copy of the plan of the Sargent land, which you had procured for me. If so, some mistake was made. The enclosed is a tracing

from Mr. Greenleaf's plan. I trust you have not been put to any inconvenience by the mistake, if any was made in this office.

Yours truly, (79 words)

Boston, Mass., Dec. 7, 1899.

Mr. William F. Kimball,
79 Blackstone St., Boston, Mass.
Dear sir:—

I have your letter of yesterday, in which you say that you think my charges are too high, and that you are surprised to receive your bill before the estate of your uncle is settled. The charges are exceedingly low. You must remember the expense of running an office in a large city is much greater than in a country town. I sent you the bill on the first day of July, because I make out my bills every six months. If you wish it to stand until the estate is settled, or until a more convenient time for payment, it may. I wish to do everything to accommodate you.

Very truly yours, (125 words)

Boston, Mass., Dec. 11, 1899.

Messrs. Hill & Snow,
Boston, Mass.
Dear sir:—

Mr. Peterson telephones me that you are making written contracts for the purchase and sale of canned and other goods, many of which are made with brokers, and wishes me to advise you in writing whether the memoranda for the purchase and sale must be stamped. The War-Revenue Law, in Schedule A, on pages 12 and 14, contains the following clauses:—"Upon such sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale or agreement of sale, or agreement to sell, one cent; and for each additional one hundred dollars, or fractional part thereof, in excess of one hundred dollars, one cent; provided that on every sale, or agreement of sale, or agreement to sell, as aforesaid, there shall be made and delivered by the seller

to the buyer, a bill, memorandum of agreement, or other evidence of such sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps, in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale, or agreement to sell, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons, liable to pay the tax, as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or agreement of sale, or agreement to sell, who shall, in pursuance of any such sale, or agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof, as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be found guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of not less than five hundred dollars, nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court."

Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description, issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, ten cents.

I am quite inclined to think that Congress intended to tax only those contracts made by and between brokers, or with brokers, or in some exchange or similar place. You will notice in the first line of the first clause, which I have quoted above, the words "at any exchange or board of trade, or other similar place," and in the second clause, the words "by brokers or persons acting as such."

Clause 4, Section 2. "Commercial brokers shall pay twenty dollars. Every person, firm or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, merchandise, or to negotiate freights and other business for owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this Act."

If you were to make contracts with other merchants, and always in your own store, or in some place which could not be construed as an exchange, board of trade, or other similar place, I should have little hesitation in advising you that under these clauses, you are under no obligation to affix the stamps required. This question has not been passed upon by any court; indeed, there has not been time to present it to a court. It has been somewhat discussed, and there is a disagreement among those who have considered it, as to what Congress did intend in these clauses. It is, I think, better to be on the safe side, and to affix the stamp called for by the act, rather than to take any chance of a violation of the statute. If the statute does apply to all agreements to sell, each memorandum must be stamped. You will notice that for each one hundred dollars in value of the agreement for sale, there must be a stamp of one cent, and for each additional one hundred dollars, or fractional part thereof, one cent in addition.

Regretting that I cannot speak with more authority on this subject, I am,

Very truly yours, (790 words)

Boston, Mass., Nov. 11, 1899.

Mr. George Eames,
Abington, Mass.
Dear sir:—

What did Mr. McKinley say about the agreement I sent? Kindly inform me, and oblige,

Yours truly, (25 words)

Boston, Mass., Nov. 23, 1899.

Mr. Leonard F. Lowell,
Allston, Mass.
Dear sir:—

I have yours of yesterday, informing me that you will move in Jennings v. Soule, on Tuesday morning, to establish the claim of the Mechanics' National Bank against T. Archer & Co., and to have the question of fact tried and determined by a jury. I wish you would have the bank write to John Gorman, one of the receivers, sending him a copy of the note which it holds,

and stating that the bank wishes the claim presented for allowance against the firm. I think it useless for you to present your motion to go to the jury, because Judge Dunbar refused a similar motion last week. However, I will go up, unless you notify me in the meantime, that you do not care to press it.

Very truly yours, (139 words)

Boston, Mass., Dec. 12, 1899.

Mr. Arthur Wells,
Abington, Mass.
Dear sir:—

I find that you have demanded some items which will necessitate a revision of my report as auditor, which results in increasing somewhat the amount of Jones' discounts. I send you a copy of the revised draft. I shall immediately file my report, and would like you to send for your papers. I think Mr. Jones took your letter of December, 1894.

Yours truly, (74 words)

Boston, Mass., Nov. 11, 1899.

Mr. Albert Turner,
Quincy, Mass.
Dear sir:—

Enclosed you will please find absolute decree for divorce against your wife, Alice A. Turner. You are now entirely free from her.

Yours truly, (31 words)

Boston, Mass., Nov. 11, 1899.

Mr. David Jacobs,
Everett, Mass.
Dear sir:—

I have your note of yesterday, and notice your consideration for the widow. I think I will wait until we get the report of the auditor before I say more.

Yours truly, (39 words)

Boston, Mass., Nov. 23, 1899.

Mr. Frederick Davis.
224 Huntington Ave., Boston, Mass.
Dear sir:—

I have your letter of yesterday. I shall not of course, take any action you do not wish, if you are sure that my bill will be paid. Your brother has done nothing but criticise me, and find fault, and I do not think that I have been treated quite fairly in this matter. I therefore propose to be paid soon.

Very truly yours, (77 words)

Boston, Mass., Nov. 11, 1899.

Mr. Harvey Morton,
Natick, Mass.
Dear sir:—

Will you kindly inform me when Mrs. Cartwright will pay bill for services rendered in her petition against the Commonwealth?

Yours truly, (29 words)

Boston, Mass., Nov. 11, 1899.

Mr. Amos Morgan,
Brockton, Mass.
Dear sir:—

I run over my books once in six months, and find that you still owe me a bill rendered in January, 1892. Don't you want to close it?

Yours truly, (39 words)

Boston, Mass., Nov. 11, 1899.

Mrs. Abigail Bayne,
Chelsea, Mass.
Dear sir:—

Mr. Jenson wrote me on April 1, that he had executed and acknowedged a discharge of the Howe mortgage, and had forwarded it to you at Boston, Mass., for your signature, and that you would send it to me. Kindly do so at your early convenience.

Yours truly, (55 words)

Boston, Mass., Nov. 15, 1899.

Mr. Osborn Nichols,
Lynn, Mass.
Dear sir:

Please publish the enclosed once each week for three successive weeks and, after publication, send papers containing notice, and bill to me.

Yours truly, (38 words)

Boston, Mass., Nov. 23, 1899.

Mr. William F. White,
Lowell, Mass.
Dear sir:

I have your letter of this morning. I think Mr. Bacon must have misunderstood Mr. Irish. I was at the office when Mr. Irish telephoned Mr. Bacon. He asked Mr. Bacon if he would like me to report to him, if I had a customer. Mr. Irish then asked me if I would do so, and I replied that I would gladly, or do anything I could to hasten the settlement of Mr. Bradley's affairs. I have not a customer now, but if I find one, I will gladly report to you immediately.

Very truly yours, (112 words)

Seattle, Wash., December 1, 1899.

Mr. J. S. Sprague,
San Francisco, California.
Dear sir:—

Please inform me by return mail whether Jones & Clark have effected a composition with their creditors, and the full terms of the composition, and if a proposition for a composition has been confirmed by the court. I am not sure by your letter of the 8th whether Jones & Clark are effecting a composition under the composition act or outside of the insolvency court.

Yours truly,

(85 words) Waldo Emerson.

Providence, R. I., October 18, 1899.

Mr. L. J. Carson,
Salem, Mass.
Dear sir:—

I thank you for a copy of Mrs. Plummer's will and a copy of your objections. I have no criticisms to make. I can not, however, see any chance of sustaining any appeal.

Yours truly,

(54 words) Charles Francis Adams.

Tucson, Ariz., October 25, 1899.

Messrs. Drake & Henry,
St. Louis, Mo.
Dear sirs:—

I think the jewelry has already been returned to Mrs. Turner. You will remember that I wrote you some time ago, that Mr. Turner was ready to deliver all but one ring, if Mrs. Turner returned some of his household furniture, and that the whole matter was left with Dr. Cutler.

Yours truly,

(72 words) Henry Callender.

San Francisco, Cal., October 14, 1899.

Mr. Henry Cook,
Somerville, New Jersey.
Dear sir:—

Mrs. Swallow's two mortgages held by Mr. Buck and myself as trustees now amount to $8500.00. The first mortgage stipulates that you shall carry the insurance for $2500.00; the second one, that you shall keep the building insured for $4500; making a total of $7000.00. The mortgage has been reduced to $2000.00, so that $5000.00 insurance is probably enough to make us safe. Is it not better for you to carry more insurance as well as for us? I write this because I see the two policies amount to $4000.00 only.

Yours truly,

(130 words) Everett Buckminster.

Asbury Park, N. J., October 31, 1899.

Mr. Henry F. Knowles,
105 William St., New York, N. Y.

Dear sir:—

Since I wrote you on October 2, I have seen Mr. James Glynn. He informs me that Mrs. Sarah Bryant will be in Yorktown soon. It will therefore not be necessary to send the deed to Italy for her signature. Please have the deed returned to me, at your early convenience.

Very truly yours,

(79 words) Amos Keith.

Newburyport, Mass., October 23, 1899.

Mr. Frank R. Kimball,
89 Essex St., Salem, Mass.

Dear sir:—

When the special precept in Wright v. Shaw was sent to you, I was absent from the office, and the directions were given by my assistant, who did not understand the matter. There are some boxes of glass in the Lawrence Mills, which were stored by Mr. Clarke. I wish you would attach these boxes. Make another service at once. All you will do is to attach the glass, and make a return to that effect. You cannot, of course, make any service upon the defendant, who is out of the Commonwealth. I enclose a letter from Metcalf & Matthews, which may help you to find the glass.

Very truly yours,

(134 words) Willard H. Brooks.

Burlington, Vt., October 26, 1899.

Mr. Amos Swift,
Londonderry, Vt.

Dear sir:—

We will hear the mayor and aldermen of the City of Montpelier vs. the Vermont Central Railroad, on the petition to abolish grade crossings, on the twenty-fifth of November, 1899, at ten o'clock in the forenoon.

Yours truly,

(59 words) Stephen C. Holt.

Orono, Maine, Oct. 20, 1899.

Mr. William Lang,
Providence, R. I.
Dear sir:—

Mr. Archibald informs me that he cannot attend to the hearing on the petition to abolish the grade crossings on Saturday, at ten o'clock. Kindly inform me when you can, as I would like to get the matter started before the summer vacation.

Very truly yours,

(61 words) W. F. Keane.

St. Joseph, Mo., Oct. 20, 1899.

Mr. D. G. Hart,
Denver, Colorado.
Dear sir:—

You will remember that I called your attention the other day to the fact that Mr. Gibson refused to pay the expenses incurred by Mr. Jones in repairing a wagon belonging to R. O. Dutton Co., and that he also refused to pay the board of the horse. Mr. Jones is indebted to the firm for a small bill of merchandise, $3.86. Of course, he is willing to have this deducted from the amount due him. Will you have the kindness to ascertain from Mr. Gibson whether he proposes to pay Mr. Jones, and notify me, and oblige?

Yours truly,

(123 words) G. W. Bartlett.

Pittsfield, Mass., Oct. 15, 1899.

Mr. Henry Farnsworth,
Malden, Mass.
Dear sir:—

In answer to my request, you sent me an attested copy of bill in equity, brought by J. Gordon against J. F. Flood, Kansas City. The bill recites that a copy of an agreement is annexed, and marked "R". No such copy is annexed to the certified copy of the bill which you forwarded. Please inform me if it is annexed to the file, and oblige,

Very truly yours,

(85 words) Alfred Denfield.

Exeter, N. H., December 15, 1899.

To the Clerk of the Probate Court for Suffolk Co.,
Boston, Mass.

Dear sir:—

Enclosed please find proof of claim of Snow, Dow & Co., against Henry White. Kindly have the registrar acknowledge receipt, and inform me whether the claim is allowed.

Very truly yours,

(55 words) William Frost.

Troy, N. Y., January 5, 1899.

Mr. Charles G. Fiske,
Syracuse, N. Y.

Dear sir:—

Please inform me whether you require any further proof from the Mechanics' National Bank, of its claims against E. A. Scott & Co.

Yours truly,

(44 words) Enoch Tenney.

New York, N. Y., Dec. 4, 1899.

Mr. John F. Farnham,
23 Washington St., Boston, Mass.

Dear Mr. Farnham:—

Mr. James will inform your client what shipping property he held, if he will call at his office. He does not care to make out a list of the property to be shown to the whole of Nantucket. He says they are very gossipy people there.

Very truly yours,

(73 words) Robert Downing.

Montpelier, Vt., April 15, 1900.

Mr. Frank Rollins,
Vicksburg, Tenn.

Dear sir:—

I have duly received your check for $62.00 in settlement of claim of Pearson, Parker & Co., against H. O. Gunn.

Yours truly,

(40 words) Everett Saltonstall.

Baltimore, Maryland, February 10, 1900.

Messrs. Bradford & Updike,
Germantown, Philadelphia, Penn.
Gentlemen:—

The Columbian Grocery Company has been fined by the Municipal Court of the Brooklyn District of the City of New York, for selling adulterated pepper. Smith bought this pepper from you as positively pure. It was so labeled. There were two fines of $18.00 each, one for white and one for black pepper. You realize, of course, that a grocer's business is very seriously damaged if he gets the reputation of selling impure goods. Smith has by reason of the complaint and his conviction, suffered a heavy loss, which he will expect you to make good. The two samples of pepper upon which he was convicted, were examined by an officer of the state, and pronounced adulterated, and are now in possession of the clerk of the Brooklyn court. I shall be glad to have you investigate the matter, and shall certainly expect you to make good Smith's loss. Hoping to hear from you shortly, I remain,

Very truly,

(178 words) Charles F. Plummer.

Springfield, Mass., May 23, 1899.

Mr. Edward H. Bell,
34 Bedford St., Boston, Mass.
Dear sir:—

I think I neglected to sign each half sheet of Murphy's deposition. I remember that the commission required it, and intended to do so, but it has occurred to me that it slipped my mind.

Kindly inform me whether the opposing counsel will waive that omission on my part, and if not, can the deposition be taken from the files of the court and returned to me, so that I may comply with the commission? I regret exceedingly to have caused you any inconvenience in this matter. Yours of Oct. 23, enclosing check for $58.78, at hand, for which please accept thanks.

Very truly yours,

(134 words) Frank W. Rollins.

Portland, Me., Sept. 9, 1900.

Mr. George S. Brown,
88 Humboldt Ave., Quincy, Illinois.

Dear sir:

Enclosed is a bill for services and disbursements to date; also deed to Mabel H. Potter. Please have Mrs. Potter sign and bring it to me at your convenience.

Very truly yours,

(52 words) Homer Nelson.

Manchester, N. H., Aug. 28, 1900.

Mr. Henry White,
Fairfield, Maine.

Dear sir:—

I enclose a bill for cash I have paid out in gas matters. In looking over the matter I think $1500.00 a fair charge for my services.

Very truly yours,

(49 words) John McCarthy.

Hartford, Conn., September 28, 1898.

Messrs. E. H. French & Son,
Randolph, Mass.

Dear sirs:—

I wish you would file answer to interrogatories in Archibald Bros. and Lewis versus Robinson et al., and send me copy at your earliest convenience.

Yours very truly,

(48 words) Amos Perkins.

Buffalo, N. Y., November 12, 1899.

Mr. James Bryant,
Newport, R. I.

Dear sir:—

I just find that you gave a mortgage to Mr. Bond, on the eighteenth of October, 1875. Has this not been paid. Please write me by return mail.

Yours truly,

(50 words) Robert Burns.

Albany, N. Y., December 1, 1899.

Mr. G. C. Haines,
Butte, Montana.
Dear sir:—

I send you a rough draft of your father's will, and return the copy or the old will, which you left with me this morning. I have purposely made it brief; I think it is easily understood. If your father wishes this executed, let him return it to me, by mail, with such suggestions, if any, as he desires to make. I will then have the will prepared for signature. You understand, of course, that if your father survives both you and your mother, the will makes no disposition of his property. In that event it would all go to his brothers and sisters, by right of representation.

Yours truly,

(128 words) Theodore Evans.

Dover, Maryland, December 4, 1899.

Mr. James Fogg,
Washington, D.C.
Dear sir:—

I have yours, containing a complete list of the vessel property of Joshua Scott, No. 3 and No. 4. Do you now object to my showing this to Mr. Burns and Mr. Mangle?

Yours truly,

(52 words) Thomas Brown.

Boston, Mass., December 4, 1898.

Mr. George Oatman,
Springfield, Mass.
Dear sir:—

I certainly do not understand why you did not prove the claim as you were requested. Pray tell me how anything was to be gained by withholding it. As far as I can see it only enabled the debtors to carry through the composition.

Yours truly,

(62 words) John Smith.

Cincinnati, Ohio, April 2, 1899.

Mr. F. C. Miller,
Springfield, Ohio.
Dear sir:—

Sometime before the dissolution of the firm of M. A. Stevens & Co., a horse used in the business became disabled. Mr. Sanders took him to his stable in Cleveland, and cared for him, and got him in condition to work. He charged two dollars a week for the horse's board. The wagon in which the horse had been worked needed repairing; Sanders had the wagon repaired, and a bill of $15.75 was incurred. He delivered the horse, and gave an order to the carriage manufacturer, H. O. Ramsay, to deliver the wagon upon Smith's order. Now Smith refuses to pay repairs, and pay for the horse's board. This I consider pretty small business; what do you think? Sanders has been away; just returned this morning. He has sent the debt to Smith, and has taken it out for his wife's signature.

Yours truly,

(166 words) J. F. Wyman.

Toledo, Ohio, Jan. 1, 1900.

Mr. F. H. Hemenway,
Albany, N. Y.
Dear sir:—

I have your letter of December 31, and notice what you say about entering my office. In the short personal interview which we had the other day, I told you I wished someone who could be at my office at nine o'clock in the morning, and would be willing to remain until five o'clock, and who would give his attention to the business of the office. There is not always much to be done. Occasionally there is an opportunity to look up some interesting questions of law, which will take a student into the Law Library. There are also many small matters, of which I wish my assistant to assume the whole charge. It occurred to me that possibly you would not be content with the position of a clerkship for any length of time, not even for a year. You have had more experience than most young men who enter lawyers' offices, and no doubt are ambitious to start in on your own account. I do not wish to take anybody into the office, who will be unwilling

to remain one year at least, if I desire it. I would like to know whether, in case I desire you to come, you think you would be contented to remain for that length of time. I will pay $50.00 a month, and if you have business of your own, you can undoubtedly attend to it, without interfering with mine; I should expect mine to receive the first attention, if occasion demanded it.

Yours truly,

(273 words) Walter T. Bates.

Augusta, Maine, October 29, 1899.

Mr. Lucian Anthony,
189 Dover St., Pittsburg, Penn.

Dear sir:—

Some time last winter, one of your patrolmen called at my office, and said it was necessary to have the ice and snow cleared from sidewalk opposite 87 Church St., owned by the Keystone National Bank. I told him to employ a suitable person to clear the ice, and he employed a colored man, named Graves. The bank wishes to pay Mr. Graves' bill, but has lost his address. I would thank you to give it to me, if you can ascertain it readily.

Yours truly,

(111 words) Edward H. Sayward.

Washington, D. C., October 25, 1899.

Mr. Moses Black,
New Bedford, Mass.

Dear sir:—

Mr. Jones wrote me on March 1, that his clients would take $95.00, and no less, in settlement of their suit. This is 33 1-3 per cent. of their claim, $255.00, and costs, at ten dollars. The costs are taxable costs, for which you are liable, if they prove their claim. I had an interview with Mr. Jones at my office, yesterday afternoon, and as a result, he said he should advise his clients to take the $95.00 without costs, if settled. Unless you can prove that you have not received the goods for which they sue, you will probably be obliged to pay interest for some little time, in addition to cost; and, upon the evidence that you have

stated to me, you cannot, I think, establish anything on your deposition and set-off. I therefore advise you to accept this offer, and settle it at once. If you follow my advice and do settle, I wish you to take the enclosed paper to Mr. Jones, and have him sign it. When signed, have it filed in court, so that the action may be disposed of.

Yours truly,

(219 words) W. A. Hunter.

Exeter, N. Y., October 13, 1898.

Mr. Henry Turner,
Poland Springs, Me.

Dear sir:—

Mrs. Fuller's bill in equity to restrain the executors from foreclosing the mortgage was to be heard tomorrow. Until this forenoon, I have been able to get no definite offer in settlement. I have just had an interview, however, with Mr. Gordon, who represents Mrs. Fuller. He offers $2000.00. It is barely possible he would offer more later. I have concluded to postpone the trial for one week, hoping to receive in the meantime, further instructions from you. Mr. Fuller, as you know, has disappeared. He undoubtedly forged many signatures before he left, and the court is likely to find, as you know, if Mrs. Fuller testifies with any positiveness, that her name is forged on the Rich mortgage and mortgage note. I have had a long interview with Mr. Kelley this morning, who has made a somewhat careful examination of the matter, and who caused a complaint to be made against Mr. Fuller, for forging these signatures. He was present at the hearing in the Municipal Court and from all the evidence which was presented, he is thoroughly convinced that these signatures are not genuine. Immediately after the hearing, Fuller disappeared and I have not been able to learn where he is. The warrant issued, but has not been served, because Fuller could not be found. I wish you to understand fully the situation, and shall be very sorry to lose this case, after having received so good an offer as $2000.00. You will very readily see that we are in a position of uncertainty, because we have no one who has witnessed her signature. Mr. Fuller himself, is a

fugitive from justice, and if Mrs. Fuller swears at all positively, it will be very hard to meet her testimony. Kindly telegraph me as soon as you receive this, whether you will modify your instructions first given me to accept fifty per cent. of the face of the claim, including interest.

Very truly yours,

(348 words) J. H. Cabot.

Concord, N. H., Oct. 20, 1899.

Messrs. Flint & Snow,
Boston, Mass.

Dear sir:—

I succeeded in finding Mr. Becker, counsel for the assignee of Hartnett, Fielding & Co., yesterday. He did not, however, have the deed of assignment in his possession, and was not certain as to its provisions. Mr. Baxter called upon me this morning, and gave me opportunity to examine the deed of assignment. It is on the regular printed form, and is intended to secure substantially the same distribution of the assets of the assignors as would be made under the Insolvency Laws of this Commonwealth. The claims of all creditors who assent to the deed of assignment are absolutely barred and discharged. There is no provision in the deed which operates to cancel the lease, and so far as the deed of assignment goes, you can hold the lessees for all rents accruing subsequent to the deed. If, however, you should recognize the assignee as your tenant, that recognition might operate to cancel the lease. You will, therefore, be careful in making bills to Mr. Baxter for the use and occupation after the deed of assignment. Mr. Baxter informs me that the bill against you for work performed was after the deed of assignment, but I understand that the order was given before. There may be a grave question whether you are not, under these circumstances, obliged to pay in full for the work which he did, if what he states is true. I have told Mr. Baxter that I would advise you to assent to the deed of assignment on your merchandise account, first crediting the two hundred dollars for work, shown on the bill which you sent me. You would undoubtedly permit the assignee of Hartnett, Fielding & Co. to continue the business, if they would pay in full the rent accruing before the deed of assignment. From what I can learn, I think the

debtors will probably succeed in making an arrangement by which they will continue the business, and if they do, they will want the premises. As the deed of assignment provides that the assent may be on the sheet itself, or on a separate paper, I think you had best write a letter to Baxter, substantially as follows: "We will assent to the deed of assignment from Hartnett, Fielding & Co., upon receipt of the balance due us upon open merchandise account, crediting our account with one hundred and fifty dollars for press work, as per bill dated Jan. 20, 1896. We will not, however, assent to the assignment of our claim for rent falling due under lease of the premises occupied by the debtors." I return bill you sent me.

Yours truly,

(461 words) R. J. Damon.

Trenton, N. J., Nov. 6, 1899.

Mr. Daniel Barton,
Springfield, Illinois.

Dear sir:—

Norris & Sons, soap manufacturers, of Malden, Mass., have mailed me what purports to be a copy of a petition filed in the Superior Court for the County of Middlesex, Mass., by the Eureka Manufacturing Co. vs. the American Grocery Co., both plaintiff and defendant being corporations organized under the laws of the State of Georgia. The plaintiff complains that it has adopted as a trade-mark for soap, the words "Magic Cleaner," and that the defendant has infringed upon the mark; at least, I think that the plaintiff means to make that complaint, although it is not distinctly alleged. It is clear to my mind that the defendant has not infringed upon the plaintiff's mark. The soap sold by the defendant is clearly and distinctly marked "Electric Cleaner," and the name of Norris & Sons is clearly stamped upon each bar of soap. It seems to me that the only danger in this case is that Norris & Sons' wrappers are so similar to those of the plaintiff that an ordinarily prudent person may be deceived by the similarity, and be induced to purchase Norris' soap for that of the plaintiff. The rules governing the imitation of packages are quite clearly stated in the 26th American and English Encyclopedia of Law, page 462:

"Irrespective of a technical trade-mark, a manufacturer or trader has a right in the manner, style, and form in which he dresses his goods, to an extent sufficient to enable him to prevent other manufacturers of the same class of goods from adopting this same style of dressing, package, and manner of preparing the goods for the market, which will be likely to deceive an intending purchaser, and induce him to believe that he is buying the goods of the first manufacturer when receiving those of the infringer; and a rival trader has no right to beguile the buyer into buying his wares under the impression that he is buying those of a rival of established reputation; and this doctrine is extended to the protection of the form, shape, color, names, directions for use, location of labels, arrangement of wrappers, and all other indicia, which have the capacity of serving to identify the goods of a manufacturer as his own, and can impress the mind of a would-be purchaser who is to some extent familiar with the goods of the first adopter of these signs, into believing that in buying the goods of the second party, he is receiving those of the first adopter. "This of course comes under the doctrine of unfair competition in trade, and not of trade-marks strictly. To the same effect, notice:

Jones vs. Baker, 42 Federal Reports, 423.
Babbitt's Baking Powder vs. Jones, 18 Fed. Rep., 187.
Minchin vs. Hamilton, 5 Fed. Rep., 680.
Grimes vs. Crane, 108 U. S., 210
Hildreth vs. Lathrop, 2 Dill., 684.
Jones vs. Morse. 254 Mass., 251.
The Meridian Co. vs. The Odell Mfg. Co., 57 Fed. Rep., 971.

Though the cases which I have cited held that a defendant may be restrained from making use of a colorable imitation of a rival's label, they all recognize, I think, clearly, the fact that color and form alone do not constitute a valid trade-mark. Notice in addition to the cases cited in support of this proposition:

Re Landreth in Brown Trade-Marks, s. 89 D.
Payson's Indelible Ink in Brown, ss. 271-212.
Phila. Novelty Mfg. Co., vs. Rowse, 40 Fed. Rep., 585.
Phila. Novelty Mfg. Co. vs. Blakely Novelty Co., 40 Fed. Rep., 585.
Fleischman vs. Starkey, 25 Fed. Rep., 127.
Faber vs. Faber, 49 Barb., 357.

It becomes a question of fact in my opinion, whether Norris's label is a colorable imitation of the plaintiff's. An inspection of the two wrappers discloses that upon each there are five watches, and each is of white paper, upon which there is printing in green colors; the shades of color, however, are different. There is no latin cross upon Norris's wrapper. In the centre are the words "Electric Cleaner" in an entirely different type from the words "Magic Cleaner." The words "Electric Cleaner" are surrounded by electric bolts, and there is nothing certainly in the type or in the matter about the words "Electric Cleaner" in Norris's wrapper which resembles in any way the words "Magic Cleaner" in the plaintiff's wrapper. The only point of resemblance, it seems to me, is that both use a shade of green, although there is a marked difference between them; and upon both are stamped or printed watches, although the watches are entirely different. The soap is put up in these wrappers, and when exposed for sale in a store, the prominent thing which strikes the eye, is the words "Electric Cleaner" and "Magic Cleaner." There is so great and striking a difference between them, that there is nothing here which has the slightest tendency to deceive. I think it will be of great assistance to the court which has to pass upon the question of whether Norris's label is a colorable imitation of that of the plaintiff, if he can have placed before him several bars of the two kinds of soap, and placed as they usually are in a country store.

I notice that the plaintiff asks to have a temporary injunction issued, and that an order to show cause, returnable on the 29th of June, has already been issued. The court should not, of course, issue a temporary injunction unless the plaintiff will sustain an irreparable injury without such relief, and in this connection, I wish to say that Norris & Sons, who are the real parties defendant, and the only parties in interest, will furnish a bond with sureties to pay the plaintiff all damages that he may suffer by reason of the imitation of his label.

Mr. Norris consulted me for the first time yesterday afternoon, and wished me to write a letter to counsel who have been engaged by the American Grocery Co., the nominal defendant. I have written this letter, which will be forwarded to the American Grocery Co., and by them delivered to you. I have also hastily prepared an answer which covers, I think, the principal points raised

by the plaintiff's petition. I have admitted that the defendant has been using a label of which exhibit "A," attached to the plaintiff's petition, is a copy. You will, of course, be certain, before you make such admission, that the plaintiff has attached to his petition a true copy of the label. I shall be glad, at any time, to hear from you about this matter.

Yours truly,

Benjamin Glover.

P. S. The draft of the answer is only intended to be of such service as it can be to you in framing yours.

(1197 words)

Jacksonville, Fla., December 1, 1899.

Mr. T. F. Church,
Milford, New Hampshire.

Dear sir:—

I forgot to mention to you yesterday the indebtedness due Osborn, as trustee. The firm owed Osborn as trustee for the firm and one Backup, $12.00 or $13.00 when McKenzie died. Osborn also held a note of one of McKenzie's customers for for some $400.00, payable to him as trustee, and I understand Mr. Danford has collected a large part of this note. Of course Mr. Osborn does not claim this money for himself. All he desires is that Backup should have the part to which he is entitled for the amount due Osborn as trustee, at the time of McKenzie's death. He comes in with the other creditors, and will sign off at thirty-three and one-third cents. The amount collected must, of course, be paid in full.

Yours truly,

(154 words) Jefferson Gilmore.

LEGAL FORMS AND PLEADINGS.

It has been the intention in the following pages to present as varied a collection of legal forms and "pleadings" as would be necessary for any stenographer in a law office to understand. All others may be written in similar style. The proper arrangement when typewritten has been indicated as closely as ordinary type would permit, and in some cases a variety of permissible forms are shown.

WRIT.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss.

To the Sheriffs of our Several Counties, or their Deputies:

(L. S.) *Greeting:*

We command you to attach the goods or estate of Elbridge Gerry and Samuel Miller, both of Boston, in said County, copartners under the firm name of Gerry and Miller, having a usual place of business in said Boston, to the value of Two Thousand Dollars, and summon the said defendants (if they may be found in your precinct) to appear before our Justices of our Superior Court, to be holden in Boston, within and for our said County of Suffolk, on the first Monday of November next, then and there in our said Court to answer unto Bertram F. Randolph, of Brookline in our County of Suffolk, plaintiff in an action of contract: To the damage of the said plaintiff (as he says) the sum of Two Thousand Dollars, which shall then and there be made to appear with other due damages. And whereas the said plaintiff says that the said defendants have not, in their own hands and possession, goods and estate to the value of Two Thousand Dollars aforesaid, which can be come at to be attached, but have intrusted to and deposited in the hands and possession of the Boston Trust Company, a corporation duly established by law and having a usual place of business in said Boston, Trustee of the said Defendants' goods, effects, and credits to the said value: We command you therefore, that you summon the said supposed Trustee (if it may be found in your precinct) to appear before our Justices of our said Court, to be holden as aforesaid, to show cause, if any it has, why execution to be issued upon such judgment as the said Plaintiff, may recover against the said Defendants in this action (if any) should not issue against their goods, effects, or credits in the hands and possession of the said Trustee.

And have you there this Writ with your doings therein. Witness William Gray, Esquire, at Boston, the thirtieth day of September in the year of our Lord, one thousand eight hundred and ninety-seven.

EDWARD ESTES, Clerk.

A true copy.

Attest: John B. Adams: Deputy Sheriff.

PETITION FOR ADMISSION TO THE BAR.

To the Honorable the Justices of the Supreme Judicial Court.

County of Suffolk.

Respectfully represents Bernard Jones of Chelsea in the County of Suffolk, that he is a resident and a citizen of the Commonwealth of Massachusetts, of the age of twenty-one years, that he last studied law in the County of Suffolk, (at the Law School of Harvard University) and that it is his intention, if admitted as an attorney, to practise law in this Commonwealth.

Wherefore he prays that he may be examined, and if found qualified, admitted to practise as an attorney, and by virtue thereof as a counsellor-at-law in any of the the courts of this Commonwealth.

BERNARD JONES.

I, Wilfred Collins, attorney of the bar of this court, certify that the facts stated in the foregoing petition are true to the best of my knowledge and belief; that the petitioner is a person of good moral character, and recommend that he be examined in accordance with the prayer of his petition.

WILFRED COLLINS,

Attorney.

Boston, September 13, 1899.

William F. Brown, Esq.,

19 Essex St., Boston, Mass.

DEAR SIR:—A claim against you for $450 has been placed in our hands for collection. Please call at once and settle this claim, and thus save yourself costs and further annoyance of a suit.

Yours truly,

JAMES F. TITCOMB.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. Municipal Court of the City of Boston.

Max Marcus

vs.

William F. Brown

PLAINTIFF'S DECLARATION.

First Count. And now comes the plaintiff and says that the defendant owes him the sum of four hundred and fifty dollars ($450) for goods bargained, sold, and delivered, by the plaintiff to the defendant, according to the account hereto annexed.

Second Count. And for the same cause of action, the plaintiff says that the defendant owes him the sum of four hundred and fifty dollars ($450), according to the account hereto annexed.

By his attorney,

JAMES F. TITCOMB.

ACCOUNT ANNEXED:

Boston, Mass., May 5, 1899.

William F. Brown

To Max Marcus, Dr.

1 Century Stanhope 5379	$375.00
1 Imperial. Trap	250.00
	$625.00
Cr.	
1 Top Buggy Pole	$175.00
	$450.00

DEFENDANT'S ANSWER.

And now comes the defendant in the above-entitled action and denies every allegation in the plaintiff's declaration and writ contained.

By his attorney,

SIMON SAMUELS.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. Municipal Court of the City of Boston.

Max Marcus
vs.
William F. Brown

The Boston National Bank, Trustee

TRUSTEE'S ANSWER.

And now comes the Boston National Bank, summoned as trustee in the above-entitled action, and says that, at the time of

the service of the plaintiff's writ upon it, it had not in its hands or possession, goods, effects, or credits belonging to the defendant.

By its attorney,

WILLIAM WATERSON.

DISCHARGE OF TRUSTEE.

The Boston National Bank, summoned as trustee in the above-entitled case, may be discharged.

JAMES F. TITCOMB,

Attorney for Plaintiff.

TRUSTEE'S ANSWER.

And now comes the Boston National Bank, summoned as trustee in the above-entitled action, and says that at the time of the service of the plaintiff's writ upon it, it had in its possession the sum of four hundred thirty-nine and 47-100 dollars ($439.47) belonging to the defendant.

By its attorney,

WILLIAM WATERSON.

BROWN vs. ANAN.

PLAINTIFF'S DECLARATION.

And the plaintiff says the defendant owns and operates by agents or servants divers express wagons in the City of Boston.

And the plaintiff says that, on the 14th day of June, A. D. 1897, the defendant by his agent or servant permitted one of the teams so operated, to remain on Hanover Street unattended and without precautions to prevent the horse attached thereto from starting and running along the street.

That, while the agent or servant of the defendant was away said horse started, ran down Hanover Street onto the sidewalk of Washington Street, the forward part of the wagon striking a large glass window, before which the plaintiff was sitting, breaking the same and scattering the broken glass over the person of the plaintiff, injuring and severely wounding her, and causing to the plaintiff great mental fear and suffering.

And the plaintiff says she was in the exercise of due care, but that the defendant was negligent, and that said horse and team were so left unattended in contravention of law.

And the plaintiff further says that, by reason of said injury, the has suffered greatly, both in mind and body, and has been put to large expense for medical attendance and nursing, all to her damage.

By her Attorney,

EDWARD L. TRAVIS.

COMMONWEALTH OF MASSACHUSETTS.

Superior Court.
June, 1899.

Suffolk, ss.

C. S. Smith,	)	
	)	
vs,	)	Contract.
	)	
M. F. White	)	

PLAINTIFF'S DECLARATION

And the plaintiff says that he is a dealer in foreign and domestic fruits and produce, having his usual place of business in Boston in said County of Suffolk; that on or about the twenty-third day of February, eighteen hundred and ninety-nine the defendant made an oral contract with the plaintiff for the sale of a lot of apples which were exhibited to the plaintiff by the defendant and were estimated by the defendant to contain about one hundred and fifty barrels. And the plaintiff says that the defendant offered to sell said apples at two dollars and sixty cents per barrel, and this offer was accepted by the plaintiff, who thereupon to bind said bargain paid the defendant the sum of twenty-five dollars.

And the plaintiff further says that he performed his part of the contract in every particular, that he was ready and willing to take and pay for said apples as soon as they were ready for delivery by the defendant to the plaintiff.

And the plaintiff further says that as soon as he ascertained from the defendant the exact number of barrels in the lot, he did pay the defendant for them, but the defendant wholly failed, neglected, and refused to deliver said apples to the plaintiff, whereby the plaintiff has suffered great loss and damage and seeks to recover therefor of the defendant.

By his attorney,

M. F. SARGENT.

COMMONWEALTH OF MASSACHUSETTS

Municipal Court of the City of Boston.
April 20, 1899.

Suffolk ss.

Giovanni Leopucci)
)
vs) Contract.
)
City of Boston)

PLAINTIFF'S DECLARATION.

And the plaintiff says that he was employed as a laborer upon public works owned by the defendant City: sewer construction work carried on under and by virtue of a contract between said defendant City and John McGinnis & Co., by whom the plaintiff was employed upon said work. And the plaintiff further says that said John McGinnis & Co. rightfully acted for and had authority from said defendant City in furnishing the labor of the plaintiff for said public work. And the plaintiff further says that within thirty days from the time he ceased to labor on said public work, he filed a written statement under his oath, of the amount of the debt so due him and the names of the parties or persons for whom and by whose employment the said labor was performed, said statement conforming to the requirements of Chapter 270 of the Acts and Resolves of Massachusetts for the year 1892, a copy of this statement being hereto annexed, marked "A." And the plaintiff says the defendant owes him twenty-five dollars and ninety-five cents for said labor.

COUNT TWO. And the plaintiff says the defendant owes him twenty-five dollars and ninety-five cents according to the account hereto annexed, marked "B."

The above two counts are for one and the same cause of action.

By plaintiff's attorney,

EVERETT L. JONES.

"B"

City of Boston

To Giovanni Leopucci, Dr.

Item 1. Jan. 26, 1899. To 19 2-9 days' labor performed on Sewer Construction work for John McGinnis & Co., contractors for said City of Boston, at $1.35 per day, $25.95

COMMONWEALTH OF MASSACHUSETTS.

Middlesex, ss. Police Court of Somerville.

John Jackson *vs.* Samuel B. Kerriston *et al.*

PLAINTIFF'S DECLARATION.

And the plaintiff says, that on or about the seventh day of May, A. D. 1898, he was driving his horse and wagon along a public highway known as Summit Street in said Somerville, and was at the same time using due care, and the defendants were at the same time, by their servant, driving their team along the same highway, approaching the plaintiff's horse and wagon from an opposite direction, and not using due care, but carelessly and negligently did the defendants, by their servant, drive the said team, and by reason of such want of due care, and careless and negligent and unskilful conduct, the defendants' team was driven foul of and against the plaintiff's team, and the plaintiff's harness was detached from the horse and badly broken, and the plaintiff was put to expense in having the same repaired, and also delayed and injured in his business.

By his attorney,

JAMES C. SWIFT.

COMMONWEALTH OF MASSACHUSETTS.

Municipal Court of the City of Worcester.

Worcester, ss.

M. Marcus & Company

vs.

J. L. Hanson, *et al.*

ANSWER OF THE DEFENDANT BRAZIER.

And now comes the defendant John B. Brazier, and for answer, denies each and every allegation in the plaintiffs' writ and declaration contained.

And further answering, the defendant says that he dwelt in the Commonwealth of Massachusetts when the judgment declared on in the plaintiffs' declaration was recovered; that he then had no last and usual place of abode in the City of Minneapolis or in the State of Minnesota when the writ in said action was served; and that he was then an inhabitant of and dwelt in said Commonwealth of Massachusetts.

This defendant further says that no legal service was made upon him, and that said judgment has no force or effect in this Commonwealth, and cannot be enforced against him.

By his Attorneys,

BLACK & WHITE.

COMMONWEALTH OF MASSACHUSETTS.

Essex, ss. Superior Court.

Emma L. Stevenson

vs.

Bay State Benefit Life Association
and
Garfield National Bank, Trustee.

PLAINTIFF'S DECLARATION.

And the plaintlff says that the defendant entered into a contract of insurance with one Edmund L. Stevenson, by the terms of which it agreed to pay five thousand dollars to Emma L. Stevenson, if living, in ninety days after satisfactory proof had been furnished to it of a valid claim under said contract, consequent upon the death of said Edmund L. Stevenson from any cause not enumerated in the tenth paragraph of the conditions and rules contained in said contract of insurance, which contract of insurance was policy No. 98452.

And the plaintiff further says that said Edmund L. Stevenson died on the first day of November, 1895, and that she has furnished satisfactory proof to the defendant of a valid claim under said contract of insurance, consequent upon the death of said Edmund L. Stevenson; that her claim under said contract of insurance was duly approved by the defendant on or before the 19th day of March, 1896, and that she is entitled to receive and recover from the defendant the said sum of five thousand dollars.

By her attorney,

MOSES T. FAIRBANKS.

COMMONWEALTH OF MASSACHUSETTS.

Hampshire, ss. 8542 Eq.

Keene, *et als.*
vs.
Kingman, *et als.*

DEFENDANTS' DEMURRER.

And now come the defendants and demur to the plaintiffs' bill, and assign the following causes for demurrer:

First. That the plaintiffs have not set forth such a case as entitled them to equitable relief.

Second. That the plaintiffs have a plain, complete, and adequate remedy at law.

Third. That the plaintiffs' bill is multifarious.

By their attorney, B. SHARPE.

I, Benjamin Sharpe, attorney for the defendants in the above entitled cause, do hereby certify that the above demurrer sets forth sufficient grounds for judicial inquiry, and the same is not intended for delay.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. Superior Court.

Graham
vs
Nelson, *et al.*

PLAINTIFF'S DECLARATION.

And now comes the plaintiff and says that while she was lawfully upon the sidewalk and highway of Warrenton Street, Boston, which sidewalk was on the premises of and bordering the estate owned by said defendants, and while she was lawfully walking on said sidewalk and exercising due care in so doing, February 7, 1898, she slipped and fell upon an accumulation of rough, hubbly, and rugged ice upon said sidewalk, and fractured her leg, and has suffered great pain and injury therefrom, and she says that said defendant carelessly and negligently left said sidewalk in said condition and allowed said ice to accumulate thereon.

By her attorney,
SAMUEL W. JOHNSON.

Suffolk, ss. Superior Court.

Fannie E. Thompson

vs.

Mary E. Manning.

PLAINTIFF'S DECLARATION.

Count 1. And the plaintiff says that heretofore, to wit, on the 24th day of November, A. D. 1895, between the hours of 7 and 8 in the evening of said date, the defendant owned or controlled a certain building situated on Tenth Street in that part of Boston known as South Boston in said Commonwealth, said building being numbered 35 on said Street.

That on or before said date the defendant let certain rooms on the second floor of said building to one Evans, to be used by him as a habitation and place of abode. That on or about said date the said Evans was in the occupation of said premises on said second floor, and the defendant afforded and held out the halls and stairway, which stairway leads to and is on the first floor of said building running from said Tenth Street, as a proper and safe means of access to said rooms. And said Evans invited the plaintiff to enter said building and go to his said rooms on said second floor to transact business and do other acts of necessity or charity with the said Evans and his family, and the plaintiff did so at his invitation.

And the defendant negligently kept said halls and stairway so unsafe and dangerous and so dark and unsufficiently lighted, that the plaintiff while departing from said rooms through said hall and stairway and down said stairway and using due care and diligence, was by their being so unsafe and dangerous, and so dark and unsufficiently lighted, and by reason of the negligence of the defendant in keeping said hall and stairway in so unsafe and dangerous a condition and so dark and unsufficiently lighted, thrown down and made sick and severely and permanently injured in her body and mind, and put to great expense for medicine and medical attendance.

And the plaintiff says that while in the exercise of due care and diligence as aforesaid, she had no knowledge of said conceaed danger, but that the defendant knew and by the exercise of pro er

diligence on her part could have known or have reason to know that said passageway or stairway was dangerous, defective, and unfit to be put to the use for which it was put by the defendant at the time the plaintiff was injured, all to the damage of the plaintiff as she says in the sum of Ten Thousand (10,000) Dollars.

Count 2. And the plaintiff says that the defendant owned and controlled a certain building situated on No. 35 Tenth Street in that part of Boston called South Boston, in said Commonwealth. That said building is rented by her to different persons as tenants at will. That one Evans hired and occupied the tenement on the second floor of said building. That on the lower floor of said building occupied by said Evans and others as tenants at will is a narrow entry or passageway leading to a certain stairway, which stairway leads to the street door of said building. That said entry or passageway and said stairway are provided by the defendant for the use of said tenants on the premises to be used by them as incident to the occupation of said premises. That said defendant has exclusive control of said entry or passageway or said stairway, and is bound to keep the same in repair for the use of said tenants, including the plaintiff. That said entry or passageway is improperly lighted, narrow, abrupt, and dangerous, and said stairway was suffered by the defendant to be left in a dangerous and defective condition, to wit, that the boards or steps which were part of said stairway were very badly worn, and the nails with which said steps were fastened unto said stairway protruded in so dangerous a manner as to make travel upon said stairway for the plaintiff and other occupants of said building hazardous and wholly unfit for the use intended. That the defendant, well knowing the dangerous condition of said stairway as aforesaid, suffered the same to so remain on the 25th day of November, A. D., 1895. That said defendant failed and unreasonably neglected to make proper repairs and to render the same safe for the use for which it was intended.

That on or about the 24th day of November, A. D. 1895, between 7 and 8 o'clock on the evening of said day, the plaintiff being lawfully on said entry or passageway and in the exercise of due care and diligence, and because of the carelessness of the defendant aforesaid, fell down said stairway and suffered thereby painful and permanent injuries. And the said Evans invited the plaintiff to enter said building and go to his said rooms on said sec-

ond floor to transact business and do other acts of necessity or charity with the said Evans and his family, who were tenants as aforesaid, and the plaintiff did so at his invitation.

And the plaintiff says, while in the exercise of due care and dilligence as aforesaid, she had no knowledge of said concealed danger, but that the defendant knew, and by the exercise of proper diligence on her part could have known or have had reason to know that said passageway or stairway was dangerous, defective, and unfit to put to the use for which it was put by the defendant at the time the plaintiff was injured, all to the damage of the plaintiff as she says in the sum of Ten Thousand (10,000) Dollars.

And the plaintiff says she was for a long time made sick and lame and unable to attend her ordinary duties, and was obliged to expend large sums of money for nursing and medical attendance, all to her great damage,

By her attorneys,

DEWEY & SCHLEY.

DISCHARGE.

KNOW ALL MEN BY THESE PRESENTS,

That I, Hannah T. Poore, in consideration of fifty dollars to be paid by Benjamin Mills, Robert Mills and Samuel L. Mills, copartners in trade under the name of Mills Brothers (the receipt whereof is hereby acknowledged), do hereby remise, release and discharge all claims and demands of whatever nature, either at law or in equity, which I now have or have had since the beginning of the world, against them or either of them.

This is especially intended to release and discharge all claims growing out of an action now pending in the Superior Court for the County of Suffolk, in which I am the plaintiff and said Mills Brothers are the defendants.

IN WITNESS WHEREOF I have hereunto set my hand and seal this twelfth day of June, A. D. 1899.

HANNAH T. POORE.

Signed and sealed in presence of

WARREN HASTINGS.

COMMONWEALTH OF MASSACHUSETTS.

Norfolk, ss. Superior Court.

: : : : : : : : : : ::

John Quincy Adams, ::
Executor, ::

–v.– ::

James G. Blaine, ::
Assignee. ::

: : : : : : : : : : ::

REPORT TO SUPREME COURT.

This was a writ of replevin heard by the Court without a jury. Benjamin F. Butler carried on the business of tailoring on Winter Street in Quincy, and it appeared that in the month of August, 1889, he borrowed one thousand dollars from Ulysses S. Grant, his uncle, for which he gave a promissory note, a copy of which with the endorsements thereon is hereto annexed and marked "Exhibit 1." At about the time said money was borrowed said Butler executed to said Grant a bill of sale of the stock of goods, fixtures, and other property in his said store, a copy of which is hereto annexed and marked "Exhibit 2", and said Butler and Grant executed an agreement, a copy of which is hereto annexed and marked "Exhibit 3." Said note bore date August 11, 1889, said bill of sale, August 5, 1887, and said agreement, August 12, 1889.

I find that said instruments though bearing different dates constituted parts of one transaction. The interest was regularly paid

upon said note, as appears by the endorsements on the back thereof; and said note, bill of sale, and agreement were found among said Grant's papers at his decease.

No delivery of the property mentioned in the bill of sale was ever made by said Butler to said Grant. The property mentioned in said bill of sale remained in the possession of Butler without delivery to Grant, Grant never having taken possession of the same, and the cloth was all made into garments and sold by Butler in the regular course of his business, and other goods were bought by Butler in his own name to place and keep in his store, and these again, were made into garments and sold to customers, and so on. The goods so subsequently bought by Butler were bought on his own credit, and in the purchase of them he used the proceeds of goods sold, his profits in the business, and other money intermingled, paying the expenses of the business from the same sources, and Butler continued to carry on the business at said store in his own name, purchased goods in his own name in the manner above stated, and sold the same from time to time, and traded the safe away for another safe, but upon what terms did not appear, so that at the time of the assignment and service of the replevin writ hereinafter mentioned, the stock of goods which Butler had in the store and the safe there were not the same that were covered and described by the bill of sale; and it did not appear whether the amount and value of the goods replevied was more or less than that included in said bill of sale, or how the same compared in amount and value, or to what extent the goods replevied had been purchased by the proceeds of goods sold, or to what extent by profits or other money. The fixtures were the same. On October 23, 1898, Butler executed to the defendant a common law assignment of all his property, including stock of goods, fixtures, and safe then in the store, for the benefit of his creditors, and the same was duly assented to by the requisite number of creditors, and the provisions of law in regard to the same complied with. The defendant took possession of said property, including said stock and fixtures and safe then in the store, and was about to sell the same when the same was replevied in the present action. Plaintiff is the executor of Ulysses S. Grant. Upon the above facts the Court ruled that no trust was established

in favor of the plaintiff in the property replevied except in the fixtures, and as to all other property ordered a return to the defendant with damages, but found that there was a trust established in the fixtures and found for the plaintiff in replevin for said fixtures.

I report the case to Supreme Judicial Court, for determination of the questions of law involved. If the rulings and findings or either of them were erroneous, they are to be set aside, reversed, or modified, and such order entered as the Court shall determine; otherwise judgment shall be entered upon the findings.

Suffolk, ss. Superior Court.

John Quincy Adams, In Replevin,

—v.—

James G. Blaine, Assignee.

AMENDED FINDING AND FURTHER FINDING.

In the above entitled case the Court finds for the plaintiff as to six chairs, one desk, one cutting-table, three counters, one mirror, one oak table, one black walnut table, one clock, picture frame and rods, and finds for the defendant for all the other goods and chattels mentioned in the plaintiff's writ, to wit, about two hundred pieces of suitings, vest and pant patterns, all trimmings, and all other goods of every kind of material mentioned in said writ, and one safe, and orders a return to the defendant of all said last-mentioned goods, with damages in the sum of $50.69.

COMMONWEALTH OF MASSACHUSETTS.

Middlesex, ss. Court of Insolvency.

FINAL REPORT

Of Henry W. Chapman, surviving assignee of David T. Hill.

Since filing my last account, I have sold the only remaining property of the estate of said insolvent, remaining to be disposed of. This consisted of a large tract of land situate in West Virginia, and known as the Van Buren Furnace Property.

I have made many efforts to sell this real estate. It was reported to contain valuable deposits of manganese ore, and was, when the debtor was adjudged insolvent, covered with oak trees.

Several intending purchasers have made extensive explorations to discover the deposits of manganese, but all these intending purchasers failed to find a deposit in sufficient quantity to justify the purchase of the property for the purpose of mining this ore, and all my efforts to sell the property to such purchasers failed.

To further satisfy myself as to the value of this land, I sent a Mr. Smith, an expert in the value of real property, to West Virginia to examine this land, and he reported to me that this land was situate twelve miles from the nearest railroad and was barren and mountainous, and was so situated and the soil was of such quality that it was of little value, and that it would be exceedingly difficult to sell it for any considerable sum.

Having been unable to sell the property for mining purposes, I next directed my attention to the disposition of the bark upon the oak trees, and after many efforts I succeded in selling the bark for five thousand dollars, which was accounted for in my last account.

After having sold the bark from the trees, there remained simply a barren and mountainous area, which was of little value and exceedingly difficult to dispose of.

Some two years ago, an intending purchaser made a deposit to cover a contemplated purchase, but before the time came for taking the property, he died, and this purchase fell through.

Since his death, I have made many attempts to sell this land, and have had many bargains nearly or quite completed, but have never succeeded in closing a sale of the property until recently, when I sold it for the sum of ten hundred and fifty dollars. I, however, realized the sum of thirteen hundred and fifty dollars from the sale of this land, as the intending purchaser who died had previously made a deposit on which there was a forfeit to the estate of three hundred dollars.

Although I have realized but thirteen hundred and fifty dollars from the sale of this land, after the bark was stripped from the trees, it has involved a very extensive correspondence with would-be purchasers outside the state and many interviews with people in Boston, and has altogether taken a good deal of time and attention, and I think that four hundred dollars is a fair and reasonable compensation for my services rendered to this estate since the filing of my last account.

HENRY W. CHAPMAN,

Assignee.

Bristol, ss. Superior Court.

Lewis G. Thayer

vs.

Dighton, Somerset & Swansea St. Ry. Co.

REPORT TO THE SUPREME COURT.

This is an action of tort for personal injuries sustained by the plaintiff on July 18, 1899, by reason of the alleged negligence of Dr. Amos T. Hanley, who, as the plaintiff claimed, was employed by the defendants to make a physical examination of the plaintiff for

the benefit and information of the defendant. The pleadings may be referred to. The action was tried before me sitting with a jury.

There was evidence tending to prove the following facts: Before May 14, 1899, the plaintiff was strong and vigorous and had never been lame, nor suffered from hysteria of any kind, and had been engaged in hard work; and that on May 14, 1899, the plaintiff was injured by falling or being thrown from a car of the defendant in Dighton, while a passenger upon said car, and that his left leg was badly bruised by said fall, and that his left leg become swollen. On June 1, 1899, the plaintiff brought an action against the defendant to recover damages for personal injuries received by him in said accident, and while said action was pending, to wit, on July 18, 1899, Dr. Amos T. Hanley made a physical examination of the plaintiff, not for the information or advantage of the plaintiff, and which Dr. Hanley represented to be on behalf of the defendant.

To prove that Dr. Hanley was acting by orders of the defendant on its behalf, the plaintiff ordered interrogatories filed in this case to the president of the defendant corporation, under P. S. ch. 167, sec. 49 *et seq.*, and his answers thereto. The fourth interrogatory and the answers thereto were as follows:

"On or about the eighteenth day of July, A. D. 1899, was not one Amos T. Hanley employed as a physician or surgeon by and on behalf of said Dighton, Somerset & Swansea Street Railway Company to make a physical examination of Lewis G. Thayer, then residing on Webster Avenue in Dighton in said County of Bristol?

"Answer. I have no personal knowledge as to the matters inquired of, but I am informed and believe that Dr. Amos T. Hanley was employed by the defendant company to examine the plaintiff in this case."

There was evidence tending to prove that for about three weeks after the car accident, the plaintiff suffered considerable pain in his left leg and back and his left leg was swollen, weak, and lame, and he was unable to walk without a cane or crutch. The plaintiff than began to improve, and continued to gain slowly but steadily up to the time of Dr. Hanley's examination on July 18, 1899. Prior to this examination, the plaintiff had no attack

of crying and laughing without cause, or any other symptoms of hysteria.

The plaintiff consented to the examination, understanding it to be on behalf of the defendant, and on the morning of July 18, 1899, the examination was made at the plaintiff's house in Dighton, by Dr. Hanley. There were present at the examination, the plaintiff, Dr. Hanley, and Dr. William Murray, the plaintiff's physician, and Mrs. Thayer was present part of the time in that room and a part of the time in an adjoining room. The plaintiff, Mrs. Thayer, and Dr. Murray in substance testified that Dr. Hanley commenced his examination of the plaintiff in the sitting-room and concluded it in the bed-room, both rooms being in the second story of the house. In the sitting-room Dr. Hanley examined the plaintiff with his clothes on; in the bed-room the plaintiff was stripped of all his clothes except his drawers and shirt, and placed upon the bed. Dr. Hanley then examined the plaintiff's left leg and other parts of his person upon the bed, and afterwards told the plaintiff to get up from the bed and to stand upon the floor of the bed-rooom. The plaintiff accordingly arose and stood upon the floor. Dr. Hanley then directed the plaintiff to stand upon his right leg; which the plaintiff also did. Dr. Hanley then directed the plaintiff to stand upon his left leg, to which the plaintiff replied that he could not do so. Dr. Murray also informed Dr. Hanley that the plaintiff could not bear his weight upon his left leg. Dr. Hanley then told the plaintiff to try standing upon his left leg. The plaintiff accordingly tried to stand upon his left leg, and immediately collapsed and fell to the floor in a heap, with a heavy thud which shook the whole house.

The plaintiff offered to prove by Dr. Murray that upon the same day of the examination, shortly after the examination, Dr. Hanley said to Dr. Murray that the plaintiff would be well in a few weeks. Upon the defendant's objection, I ruled that such evidence was incompetent; to which ruling the plaintiff duly excepted.

The plaintiff's evidence further tended to prove that the day after Dr. Hanley's examination, the plaintiff had an attack of crying and laughing without cause, and talking wildly, and that he became

unconscious, and had many like attacks afterwards, that shortly after Dr. Hanley's examination a marked change for the worse was observed in the plaintiff's appearance and condition, and that he was seen in hysterical attacks of crying and laughing and talking wildly, generally followed by unconsciousness and exhaustion.

Dr. William Murray, the plaintiff's physician, testified to his frequent attendance upon him and to his condition, and that in his opinion the plaintiff was suffering from traumatic hysteria, and that he would never be well, or able to work again; and that the plaintiff's condition was in his judgment, caused by the two falls, —one fall from the car on May 14, 1899, and the other fall during Dr. Hanley's examination on July 18, 1899, that in his opinion the plaintiff would have entirely recovered from the effects of the car accident in a few months if he had not suffered additional injuries.

Dr. Murray further testified that he was present during Dr. Hanley's examination on July 18, 1899; and the plaintiff offered to prove by him that Dr. Hanley did not conduct the examination in a careful or skilful manner. I ruled that such evidence was incompetent, and the plaintiff excepted to this ruling.

There was no other material evidence except upon the question of damages.

At the close of the evidence on behalf of the plaintiff, I ruled, at the request of the defendant, that the plaintiff could not recover, and directed a verdict for the defendant, which the jury returned.

The plaintiff duly excepted to this ruling and direction, and at the plaintiff's request, I report the case for the consideration of the Supreme Judicial Court; if said rulings and direction were right, judgment to be entered for the defendant; otherwise, a new trial to be granted.

CHARLES S. ROSE,

Justice Superior Court.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. Municipal Court of the City of Boston.

WILLIAMS v. JONES.

Petition for the Vacation of Judgment.

To the Honorable the Justices of the Municipal Court of the City of Boston within and for the County of Suffolk.

Respectfully represents your petitioner, Robert P. Jones of Holliston, in the County of Middlesex, that he is the defendant in a certain action of contract, in which Michael Williams of said Boston is plaintiff; that the plaintiff sued out his writ on the twenty-sixth day of April, 1898, returnable on the twenty-first day of May, 1898, and that at a sitting of said Court, holden in Boston, on the twenty-fourth day of May, 1898, your petitioner was defaulted in said action; and thereafter on the twenty-seventh day of May, 1898, judgment was entered for the plaintiff in said action, and on the thirty-first day of May, 1898, execution was issued against the defendant in the sum of one hundred dollars as damages and eight dollars and seventy-seven cents costs of suit, which has not been satisfied in whole or in part.

And your petitioner further says that the officer made a false return on said writ; that said writ was not served in hand, as stated in the return thereon, and said defendant was then, and had been for some time residing in said Holliston; that no service of said writ was ever made upon him, and he had no actual knowledge of the pendency of said action against him, before said judgment was entered, and that he believes he has a good defence to said action.

Wherefore your petitioner prays that judgment may be vacated, and a stay of proceedings or supersedeas issue.

COMMONWEALTH OF MASSACHUSETTS.

Middlesex, ss. July 2, 1900,

Then personally appeared the said Robert P. Jones and made oath that the above statements by him subscribed are true, excepting those made on information and belief, and those he believes to be true. Before me.

WILLIAM PIERCE,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS.

Superior Court.

Suffolk, ss.

Between

ASA R. WALTON, of Boston, in said County of Suffolk, as he is the trustee in bankrptcy of the estate of JAMES T. THOMAS, a bankrupt,

Plaintiff,

and

ELIZABETH E. THOMAS, wife of said JAMES T. THOMAS, and GEORGE P. BURNS, and ABBIE B. CHAPIN, all of Cambridge, in the County of Middlesex,

Defendants.

BILL OF COMPLAINT.

1. Said James T. Thomas was on the twenty-first day of September last past adjudged a bankrupt by the judge of the District Court of the United States for the District of Massachusetts, and on the eighth day of December following, the plaintiff was duly appointed trustee of the estate of said bankrupt. He accepted said trust, and qualified as trustee by giving bond with sureties approved by the court, and is now acting as such trustee.

2. The plaintiff is informed and believes, and alleges upon information and belief, that said James T. Thomas was on or about the first day of March last past, and for a long time prior thereto had been, the owner of two certain parcels of land situate on Eaton Street in said Cambridge, upon which were a store, storehouse, and barn; that he had for many years prior thereto conducted a retail grocery and provision business in said store, and on or about said first day of March owned a valuable stock of groceries and provisions, and certain fixtures then in said store, and horses, harnesses, wagons, and sleighs, and other personal property used by him in the conduct of his said business; that he then owned little other property, and was then indebted to divers other persons

in the sum of seven thousand seven hundred sixty-seven dollars and fifty cents ($7,767.50) for merchandise bought for the conduct of his business; that on or about said first day of March said James T. Thomas sold said land, buildings, and stock in trade, to the defendant Burns; and that, in consideration of said sale, said Burns paid said James T. Thomas the sum of two thousand dollars in cash, and agreed to pay to the defendant Elizabeth E. Thomas the further sum of three thousand dollars, and assumed a mortgage of three thousand dollars upon said land.

3. The plaintiff is informed and believes, and alleges upon information and belief, that said James T. Thomas, by an agreement with the defendant Burns conveyed said real property to the defendant Abbie B. Chapin. The plaintiff is not, however, fully cognizant of the agreement by which said land was conveyed by said James T. Thomas to the defendant Abbie B. Chapin, and therefore cannot fully set forth the same.

4. The plaintiff is informed and believes, and alleges upon information and belief, that said James T. Thomas was insolvent on or about said first day of March, when he sold said property to the defendant Burns, and conveyed said real property to the defendant Abbie B. Chapin, and that he sold and conveyed the same for the purpose of putting the same beyond the reach of his creditors, with the intent to hinder, delay, and defraud them

5. The plaintiff further alleges upon information and belief that the defendants Burns and Chapin knew that the said James T. Thomas was insolvent, and knew that he sold and conveyed the same for the purpose of hindering, delaying his creditors, and putting the same beyond their reach.

6. The plaintiff is informed and believes, and further alleges upon information and belief, that the defendant Burns has paid to the defendant Elizabeth E. Thomas a small part only of the sum of three thousand dollars which he promised to pay her on account of said purchase from said James T. Thomas.

The Plaintiff Prays:

1. That the defendants Burns and Chapin be restrained by order of this court from conveying any part of the property deeded or conveyed to them, or either of them, by said James T. Thomas,

and that the defendant Burns be restrained by order of this court from paying any further sums of money to the defendant Elizabeth E. Thomas, on account of said purchase;

2. That the defendant Hunt be ordered to convey to him all said real property conveyed to her by said James T. Thomas;

3. That the defendant Burns be ordered to pay the plaintiff the full value of all the personal property conveyed to him by the said James T. Thomas, which he has sold, disposed of, or converted into cash;

4. That the plaintiff may have such further and other relief as in justice and equity he is entitled.

ARTHUR B. COOPER,
Solicitor for Plaintiff.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss.

December 28, 1899.

Then personally appeared the above named Asa R. Walton, and made oath and said that he has read the foregoing bill and knows its contents, that the matters therein stated to be true are true, and those stated upon information and belief he believes to be true; before me,

ARTHUR B. COOPER,
Justice of the Peace.

NOTICE is hereby given that the subscriber has been duly appointed administratrix of the estate of ANNA S. BRIGGS, late of Boston, in the County of Suffolk, deceased, intestate, and has taken upon herself that trust by giving bond, as the law directs.

All persons having demands upon the estate of said deceased are required to exhibit the same, and all persons indebted to said estate are called upon to make payment to

OLIVE E. CHAPIN, Admx.,

Boston, July 26, 1900. (Address) 4 Porter Street.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. Superior Court.

WILLIAM D. BAKER

vs.

MARTIN A. MOREY et al.

Defendants' Bill of Exceptions.

This is an action of contract to recover $1062.50, being a part of the commission received by the defendants from the exchange of a piece of real property situate in Brookline, called the Watson Estate, for a piece of property on Arlington Street, Boston, called the Hotel Lincoln.

The declaration contained three counts : One upon a written agreement; the second upon account annexed; and the third upon an arbitration and an award. There was no evidence of an award, and the third count was abandoned.

The pleadings may be referred to.

At the trial of the cause, it appeared that the defendants were real estate brokers and copartners, and had for some three years had their usual place of business at 53 State St., Boston. In the fall of 1896, they advertised for assistants, and in answer to the advertisement, the plaintiff called at the office of the defendants; and then made an oral agreement for employment, upon which he immediately entered.

The plaintiff testified that, by this agreement, he was to work for the defendants on half commission on sales or exchanges of property which he could find in Brookline and Brighton and carry to their office, and that half commission was to be full pay for all the work that he did for them; and that, after he had been some

time in the employ of the defendants, they gave him, at his request, a written agreement of which the following is a copy:

> "We, the undersigned, hereby agree to allow William D. Baker of Brookline, Mass., one-half of the commission collected on all sales of property in Brookline and Brighton, brought into the office by him, or collected through customers for property in those sections secured by him.
>
> Said Baker is to spend his time in building up the firm's list of property in the above sections, and the above stated share of commission shall be in full for such service.
>
> (Signed) MARTIN A. MOREY,
> WILLIAM J. McKINLEY.

Early in April, 1897, and while the plaintiff was in the employ of the defendants, under the foregoing written agreement, Joseph Smith and Thomas Peters, trustees under the will of one John Evans, owned a piece of land on Washington Street in Brookline, which they were willing to sell or exchange.

At the same time, one Arthur Jones owned a lot of land upon which was a family hotel, situate on Arlington Street, Boston, outside of the Brighton district.

After much negotiation, an agreement for an exchange of these properties was effected.

Before the exchange of the properties was made, it was agreed by and between defendants Morey and McKinley and the trustees of the Evans estate that the whole commission paid by the trustees should be $3500.00, less certain charges, not to amount to more than $900.00, in replacing a mortgage upon the Boston property.

One Brown, who was also a real estate broker, represented Mr. Jones, and he insisted that, if there was an exchange of properties, he should have one-half of the net commission paid by the Evans estate on the Brookline property.

The plaintiff was informed by the defendants that, if the exchange was made, one-half of the commission from the Evans estate must be paid to Mr. Brown, and he assented to the payment.

So soon as the commission was paid, the defendants paid to the plaintiff one-half of all the net commission received from the Evans estate on the Brookline property.

When the exchange was made, it was agreed by and between Brown, the defendants, and Jones, that if Brown or the defendants should place mortgages agregating $100,000 upon the Brooklyn property conveyed to him by the trustees of the Evans estate, he should pay them a commission of $4250 on the Boston property, and that, if they failed to place these mortgages within ninety days, he should pay no commission; and at the same time, it was agreed by and between Brown and the defendants that, in case Mr. Jones paid this commission, it should be equally divided between Brown and defendants.

The plaintiff testified that, in consideration of his assent to the division of the commission from the Evans estate, the defendants promised to pay him one-half of the net commission which they might thereafter receive from Mr. Jones. This the defendants denied.

Upon the cross-examination of Brown, who was a witness for the defendants, and of the defendants, it appeared that it was customary for brokers, in the case of sale or exchange of property, to divide commissions, but that he refused to recognize the plaintiff as a broker because he was the defendants' clerk.

The defendant asked the Court, among other things, to instruct the jury that the plaintiff could not recover under any custom or usage of brokers to divide commissions.

This ruling the Court refused to give, and upon this point instructed the jury:

"But the trouble comes over the commission on the hotel property. The plaintiff says that, under his agreement and also by the custom of the trade among brokers, he was entitled to one-half of that commission. The defendants say that he has nothing to do with it; that he was not entitled to it at all. That is just where the whole thing is. Now, so far as the law is concerned, what part of the whole sum—what part of the whole sum of the two commissions—was the Brookline property entitled to? Well, now, if there was an agreement between the parties and consented to by Baker, that these two properties should be pooled —the commissions pooled—and that the Brookline parties should have half and the others half, then the Brookline property would be entitled to one-half, because that would be the arrangement.

If that was the custom, or if that was the agreement, between Baker and Brown and the other brokers, if it was all consented to and agreed to, or if that was the understanding and the custom of brokers when two things were put together and it was known and understood by all these parties that the commission should be pooled and divided, why, then of course the Brookline property was entitled to one-half and the hotel property to one-half—and when I say that, I mean the representatives. That is really where the whole question is. How much of this whole commission was earned by the Brookline property? If it was only what came from the Brookline, this plaintiff has had his pay and has nothing to complain of. But if, on the other hand, either by the agreement of parties or the custom of brokers—an established custom of brokers, which was known to parties, that when a trade was made like that, the two were to be pooled and then to be divided —then one-half would belong to the Brookline and one-half to the hotel property. It seems to me that is where the whole case rests, and that is what you are to determine."

"What I have said—unless there was an agreement or understanding that they should be pooled—that is, if there was an agreement between the parties, Baker consenting to it, that the properties should be pooled and the commission divided, then I instruct the jury that one-half the commission would belong to the Brookline property and one-half to the Boston property; or if there was a well-established custom among brokers, known to all the parties, Baker and the other parties, then they would be bound by that."

To the refusal of the Court to give the ruling requested, and to the Court's instruction to the jury upon the plaintiff's right to recover under a custom, and to all that portion of the charge which is incorporated in their bill of exceptions, the defendants duly excepted, and pray to have their exceptions allowed.

By their Attorney,

AMOS ARNOLD.

Berkshire, ss. Superior Court.

ARTHUR H. RAYMOND

vs.

FREDERIC R. PUTNAM.

PLAINTIFF'S EXCEPTIONS.

This was an action of contract to recover for merchandise sold and delivered to the defendant. The sale, delivery and non-payment of the bill were admitted, but the defendant pleaded in bar his discharge in bankruptcy under the U. S. Bankruptcy Law of 1896, on his petition filed shortly after the date of the last item in the plaintiff's bill. It was admitted that the plaintiff's name did not appear on the defendant's schedules of creditors, and that he had no official notice of the filing of the petition nor of any of the meetings of creditors or other proceedings.

The defendant claimed, however, and introduced evidence tending to show that the plaintiff had actual knowledge of the proceedings in bankruptcy.

The plaintiff testified in substance as follows: That he had had the dealings with the defendant, and did not know that he had been through bankruptcy until some time in September, 1899. A paper a copy of which is hereto annexed marked "A," was shown to the witness, who testified that the first time that he saw it was during the preparation for the former trial in this case. On cross-examination he testified that the paper was left at his place of business, and had been there since July 7, 1899, when it was left by Mr. Hammond.

Q. He saw you about it? A. I imagine so.

Q. No doubt about that? A. I don't deny that.

Q. What time in the day did he come with it? A. Some time in the afternoon, I should think.

Q. Talk with you? A. Yes, sir.

Q. Had you ever seen him before? A. Yes, sir.
Q. How many times? A. I think that was the second time.
Q. When was the first time? A. Some time previously.
Q. Had you known Hammond before that? A. No, sir.
Q. The first time you saw him did he come down to your place of business? A. He might have been there.
Q. The first time that you saw him did he come down to your place of business? A. Yes, sir.

The witness further testified that Hammond came some time previous to the second time, to tell about Putnam's affairs; that Hammond said that Putnam was trying to arrange his affairs; that there was no talk about bankruptcy proceedings; that Hammond wanted witness to "sign off" at a percentage; that witness did not do so; that he came to the witness's place of business at some time considerably later; that witness did not hear him talk about any proof or claim; that Hammond came there with a paper; it might have been blank, might not, the witness could not say; that he asked witness questions, and among them what the firm's name was, and the witness told him "Arthur H. Raymond, doing business under the style of Raymond & Co."; that Hammond did some writing; that he didn't think Hammond said anything about Putnam, but he did say that he was trying to fix up Putnam's affairs; that Hammond might have written this paper "Exhibit A," and he left paper on the witness's desk; that it was picked up with other papers and put in a pigeon-hole; that nothing was said between the witness and Hammond as to what they were to do with the paper; that he didn't tell Hammond that he would go to the Court of Bankruptcy; that he did not refuse to take the paper, and did not ask Hammond to take it away; that it was simply left with him; that the witness did make some comment on Putnam that day; that he did not demand payment of his account against Putnam; that he didn't sell him any goods, and he could not say that he sent him a statement; that from the 7th of July, until he brought his suit he didn't say anything to Putnam about the claim, and did not ask him to pay it; that he did see Hammond after this, and did not tell him that he had or had not proved his claim; that he forgot all about the paper after it was left on his table; that he did not remember whether he or somebody else picked it up and put it in the pigeon-hole; that he would not read it; that he was disgust-

ed with the whole affair; that he was going to the train and had only a few minutes; that he did not know what it was; didn't know it was a blank proof of claim on the Putnam estate; that if he had thought of it again he would have read it; that he found it when he was opening the pigeon-hole afterwards, and read it; that he didn't ask anybody to look after the case in bankruptcy; that he found it when cleaning out the pigeon-holes in his desk and that he read it then, and that was the first time he knew what the paper meant; that when Hammond was in his office, he made out the paper in witness's presence; that Hammond asked the witness questions, and that he gave him information; that Hammond told him that he was trying to arrange affairs for some kind of a settlement; that witness asked him how they were going to arrange the affair; that Hammond told him they were going to try to compromise it; that he wanted to know if witness would be a party; that witness said, yes, if he could find out what was going to be offered; that the paper was folded up through the middle and left on the corner of the desk; that it was folded cover out; that it was impressed upon his memory because he was going to Springfield for a few days, and that as soon as Mr. Hammond left he jumped and left everything; that he considered it merely a compromise basis; that he did not think he looked at the paper; that it was a pretty long desk; that witness was at one end and Hammond at the other; when Hammond went out witness followed him out; that witness did not think he looked at the paper.

Joseph T. Hammond, an attorney-at-law, testified that he was an attorney practising in Pittsfield for twenty years or more; that he was counsel for Putnam through his attempts to compromise with creditors and through his bankruptcy; about the middle to the 20th of April he went to see Raymond at his office, and did not find him in; in the middle of May he saw him; at that time Putnam had filed his petition in bankruptcy; he filed it on the 11th of March; the first meeting of his creditors was on the 29th of March; offer of compromise was made about the middle of June; after the offer of compromise he went to see Raymond and made out the paper annexed as "Exhibit A"; that he said to Raymond that Putnam had had a meeting of his creditors under the advice of Commissioner Smith, a meeting of the larger creditors; and they had appointed a committee, and that the committee

were about to make their report; that he, witness, thought the estate would pay about twenty cents or twenty-five cents on a dollar; that he told Raymond that Putnam was in bankruptcy, and that he told him it was United States Commissioner Smith; that they were sitting in a rather small office; Raymond was on the right, sitting at his desk, and the witness on the left, both having equal portions of the desk; witness was sitting there and explained to Raymond the whole proceedings; told him that the first meeting had been held, the committee would report in a few days, and that he would see him again; after they had had the first meeting of the larger creditors, witness went again, soon after the 20th of June, and said to Raymond the offer of twenty cents on a dollar, ten cents in cash and ten cents in notes at sixty days, had not been acceptable to the creditors; they would only accept twenty cents in cash, and that he had proceeded and had arranged for the twenty cents on a dollar, and that that had been deposited with the Clerk of the United States Bankruptcy Court; that he told Raymond that that had been accepted by a majority of the creditors in value and in number; that the first meeting or the meeting to act upon that was the 11th of July; Raymond said, "I am going away for three or four days"; that this was the 28th day of June; that Raymond said he was going to be away and he would like to have the witness come in and bring a proof on that day, a proof of claim in bankruptcy, and on the 7th day of July the witness took this blank proof, "Exhibit A," and that he told Raymond that the final meeting to act upon the discharge was upon the 11th of July; that he brought in a blank proof and said that he could prove it for that; he could take it up to the United States Bankruptcy Court himself or he might take it to the witness's office; Raymond made no objections; that witness wrote out on the blank, right in the presence of Raymond, asked him the firm name and wrote that in; then standing up Raymond said, "I can't tell just the figures to put in there"; witness told him that would make no material difference, that he could write those in and bring that to the witness's office or he could take it right in to the United States Bankruptcy Court; Raymond said he would do so; the last words Raymond said to the witness on going out were, "Putnam will be in better condition to do business after he gets through this than he ever was before, won't he?" that the witness wrote the signature on there in his

office and wrote the whole paper there; that he did not think the paper could be technically sworn to; that the witness said to Raymond this: "You swear that the amount which you will write in here will be the true and just account which the debtor is owing to you," and that Raymond said, "I have not got the amount just now"; that Raymond did not say anything to the witness about affirming at that time; that witness said to Raymond on July 7 something about the meeting of the creditors under the advice of the Commissioner; that the committee were appointed; that he was not there nearly so long on July 7 as he was on the 29th of June; that he said nothing at all about anything except Mr. Putnam's affairs at that time.

This was all the testimony material to this bill of exceptions.

At the close of the evidence the plaintiff asked the Court to rule that upon all the evidence he was entitled to recover; the Court declined so to rule, and found for the defendant. The plaintiff, being aggrieved, duly excepted, and prays that his exceptions may be allowed.

By his attorney,

Waldo S. Fitch.

COMMONWEALTH OF MASSACHUSETTS.

Hampden, SS. Superior Court, Session Without Jury.

April, 1900.

Henry Hilton,
Plaintiff,
–v.–
Boston & Springfield Express Co.,
Defendant.

Before
Hon. Justice Perry

Appearances:

For the Plaintiff—Jones and Brown.

For the Defendant—Walter E. Foster.

May 6, 1900.

The Plaintiff, being duly sworn, testified as follows:

Q. What is your name? A. Henry Hilton.
Q. Where do you live? A. City of Boston.
Q. What is your business? A. Insurance solicitor or agent.
Q. On November 1, 1896, where were you living, Mr. Hilton? A. City of Springfield.

Q. How long had you been living there at that time? A. About one week.

Q. What was your business there? A. The same, insurance solicitor.

Q. Whether or not on that date you called at the defendant's office in Springfield? A. I did.

Q. Could you describe it? A. I saw a large sign on the building which read, "Boston & Springfield Express Company," and then another which read, "Adams Express Company." I went into the office and asked that gentleman there (indicating) if this was the office of the Boston & Springfield Express Company. He said it was. I asked him if he had an office in Boston. He said he had. I asked if he could take a trunk for me from my home in Boston to the city of Springfield and deliver it Friday. He said he didn't see why he couldn't deliver the next afternoon. I offered to pay him, but he said he couldn't accept no money, because they charged by weight.

Q. Did you give him any order? A. I gave the order first verbally; he said, "Put it in writing." I said, "Let me have one of your order blanks," and he let me have one, and I filled it out and gave it to the gentleman. After I wrote the order he brought it over to the desk and placed the stamp upon it.

Q. Is that your handwriting which is in that order? (showing to witness.) A. That is my handwriting, sir.

Q. And the sticker that is on it, the stamp; who was that put on by? A. That gentleman there.

Q. Who is this gentleman? A. The agent, I suppose, of the Boston & Springfield Express Company.

Q. Is he the gentleman you saw there? A. Yes, sir.

Q. And had your dealings with at that time? A. Yes, sir.

Q. The man who said he was the agent of the Boston & Springfield Express Company? A. Yes, sir.

Q. Did you ever receive the trunk? A. No, sir.

Q. Where did you get this order from afterwards? A. I sent for it. Mr. Wade had it.

Q. Who is Mr. Wade? A. The gentleman I was rooming with at that time in the city of Springfield.

Q. Is that the man who had charge of your trunk in Springfield? A. Yes, sir.

Q. And you wrote to him for this order? A. I did. I asked him if he had it, and if he did to sent it on immediately.

Q. Have you ever since that time received this trunk? A. No, sir; never heard of it.

Q. Have you a memorandum of the contents of the trunk? A. I have.

Q. Well, what were the contents and the value of each article? A. One trunk, $6.50.

Q. How long had you had the trunk? A. Three years.

Q. What was the condition of it? A. Good condition.

Q. Go on. A. One large strap; trunk strap that went around the trunk.

Q. What was the value? A. Seventy-five cents.

Q. You paid seventy-five cents for it? A. Yes, sir.

Q. How long had you had it? A. About a year.

Q. Go on. A. One gent's melton overcoat; twenty dollars.

Q. You paid twenty dollars for it? A. Yes, sir.

Q. How long had you had the overcoat? A. Bought it in November, and wore it off and on.

Q. November before that? A. Yes, sir.

Q. You had it one year then? A. I bought it in November.

Q. How long had you worn it during that year? A. Off and on until March; November, December, January, February, and March.

Q. What was its condition at the time you lost it? A. It was in good condition.

Q. Go on with the next article. A. One lady's beaver coat, fifteen dollars.

Q. How long had you had that? A. About three months.

Q. Whose property was it? A. My wife's.

Q. Go on. A. Gent's worsted suit, fourteen dollars.

Q. How long had you had that? A. Four months.

Q. What was its condition? A. Good condition.

Q. Next article? A. Lady's hat; four dollars; bought that in the month of January.

Q. Value four dollars? A. Yes, sir; she paid for it.

Q. You can go through this list. A. Gent's hat, worn

about four months, collars, cuffs—of course I don't know; when I wore collars or cuffs out I would throw them away—two pairs cuffs; five pairs woolen stockings; two pairs underclothes; one large silk muffler; one pair slippers; one writing desk; two pairs kid gloves; gent's umbrella; one pair gold and silver indian clubs; one Webster's Dictionary, etc.

Q. And the total value of these articles are how much? A. $100.30.

Q. When did you go to the defendant's office to see if your trunk had arrived? A. I used to call every day.

Q. When was the next time you called? A. The next afternoon.

Q. And did you see anyone there? A. I did.

Q. Whom? A. I saw this gentleman and another gentleman.

Q. And did he say anything about your trunk? A. He did not; at that time I asked if he had heard from it and he said he had not; and I would call occasionally, every other day probably, after that, and at last I got tired of calling, and I asked him, Whom shall I correspond with in regard to the loss of this trunk?" and he said, "Mr. Curtis of the city of Boston, of the Adams Express Company." I asked him how that was, because I had given the order to the Boston & Springfield Express Company, and he said "The Adams Express and the Boston & Springfield Express Company are one." So I corresponded with Mr. Curtis.

Q. Did you see Mr. Curtis at any time? A. Yes, sir.

Q. Where? A. In the office of the Boston & Springfield Express Company.

Q. Where? A. In the city of Boston.

Q. Did you have any conversation with him about the trunk? A. I did.

Q. What was the nature of it? A. I asked him if he knew where the trunk was, and he said he didn't. I asked him if he received the order, and he said that the order was sent all right, but that it blew out of the cart—

(This was objected to by Counsel for Defendant, as immaterial.)

Q. This sticker on here, "Ship our matter by the Boston & Springfield Express Company," you say you saw this gentleman

here put it on? A. Yes, sir; I saw him stamp it on, and he came over after he stamped it on, and I could see it on the paper.

CROSS-EXAMINATION OF HENRY HILTON.

Q. Are you acquainted in Springfield? A. Not very much.

Q. Before November 1, '96? A. Not very much.

Q. Had you been to the office of the Boston & Springfield Express Company before this date? A. No, sir.

Q. But as you went in you noticed two signs over the door? A. Yes, sir.

Q. Of the Boston & Springfield Express Company and the Adams Express Company? A. Yes, sir.

Q. After you got inside the door, what did you do? A. I saw this gentleman at a desk—counter like.

Q. And you asked him if that was the Boston & Springfield Express Company? A. Yes, sir; and he said it was.

Q. And after he had answered your question you told him you wanted a trunk brought from Boston to Springfield? A. Yes, sir.

Q. What mention was made of the Adams Company? A. Nothing at that time.

Q. He gave you a piece of paper? A. I asked him to give me an order, after he told me to write an order; and I filled it out and gave it to him.

Q. Then you turned around and walked away? A. I turned around and walked away.

Q. You didn't see what he did with the order? A. Brought it over to the desk and stamped that stamp on it. I heard him thump the desk that way. (illustrating)

Q. Did you go away after you gave the order? A. No, sir; not immediately. I might have stayed there five minutes. We conversed a little about the weather.

Q. What did he do with the order? A. I saw him bring the order out to the desk, take the stamp out, and thump the desk.

Q. What kind of a desk? A. The high desk.

Q. As high as your head? A. No, I could see the top of it.

Q. You could see the top of it; it slopes down in back? A. Yes, sir.

Q. And you had your eyes especially on this piece of paper to see what he did with it? A. Not especially; I was looking towards him to see what he was doing.

Q. And you saw him put this sticker on, did you? A. Yes, sir.

Q. What did you see him do then? A. He brought the order over in front of me, read it and placed it in an envelope.

Q. Did you see what kind of an envelope it was? A. I did not take notice.

Q. Did you see what he did with the envelope? A. No, sir.

Q. Then you did go away after you had seen him put it in an envelope and put the sticker on? A. Yes, sir; I offered to pay him.

Q. What was your object in staying after you gave him the order? A. I didn't expect to be in the house; and he told me he couldn't accept any money, because he must charge by weight.

Q. I thought you had that conversation before you gave the order? A. Oh, no; I wrote out the order first.

Q. Then the writing of the order was about the first thing you did here after you got there? A. After I asked him if this was the office of the Boston & Springfield Express Co.

Q. And the agent shoved this paper out to you right off? A. He went over to the desk and got it.

Q. When did you make this inventory out? A. About the 12th of December. I was requested to make out the inventory, and I made it out.

Q. Did you have anything but your memory to go by? A. No, sir.

Q. And these valuations opposite each article are the prices that they cost when they were new? A. Yes, sir.

Q. You say that—take for instance the first, the trunk, $6.50—you say you had had that three years? A. Yes, sir.

Q. How much was it worth then? A. It was worth as much to me then as it was when I bought it.

Q. How much was it worth to go out in the market to sell it? A. I don't know, sir; I could not tell you; I know if I wanted to buy one like it I would probably have to pay the same price.

Q. How much would you take for it at that time? A. Well, I wouldn't want to sell it, for I would have to pay the same price for one like it.

(Counsel for Defendant) If your Honor can take judicial notice in regard to the depreciation of value of certain things after a lapse of time, it is unnecessary to go into these items.

(The Court) I don't suppose I can take judicial notice, but I suppose I can apply my common sense. After it has been used three or four years it isn't new.

Q. How many times had you used this trunk? A. I don't suppose that I have used it over a half a dozen or a dozen times in the three years.

Q. How long trips? A. From Lawrence to Fitchburg and Fitchburg to Boston.

Q. This gent's Melton overcoat, twenty dollars; that was the cost price? A. Yes, sir.

Q. And you had it a year? A. Bought it in '97.

Q. And you had worn it every day whenever you had occasion to wear one? A. Yes, sir.

Q. This lady's beaver coat, you say now you had it only four months; didn't you say in the lower court three years? A. I don't think so; three or four months.

Q. Hadn't you had the lady's coat three years? A. Oh. no; three months.

Q. How about the coat? A. About three months.

Q. Now it was a coat for winter wear? A. Yes, sir.

Q. Did you buy it in the middle of the summer? A. No, sir; the last of December or the first of January; that would make about ten months it had been in the trunk.

Q. It was your wife's coat, was it? A- Yes, sir.

Q. And she had worn it from January up until March? A. Yes, sir.

Q. Worn it every day? A. When she would need it.

Q. And the gent's worsted suit, fourteen dollars; how long had you had that? A. Four months.

Q. Had you worn it every day? A. Occasionally on Sundays.

Q. Your best suit? A. Not exactly my best suit; I would wear it on Sundays, and weekdays sometimes. It was a worsted suit.

Q. This gent's gold-headed umbrella, six dollars; how long had you had it? A. Three years, and then I had it re-covered.

Q. How long had you had it re-covered? A. About a year.

Q. Used it whenever it rained? A. Yes, sir.

Q. Is that your writing; your signature? A. Yes, sir.

(Counsel for Defendant.) That is all.

JENNIE E. WADE, being duly sworn on behalf of the Plaintiff, testified as follows:

Q. What is your name? A. Jennie E. Wade.

Q. Where do you live, Mrs. Wade? A. Cambridge.

Q. What street and number? A. 593 Broadway.

Q. Where were you living in November, between November 1 and November 5? A. The same address.

Q. Are you the wife of B. S. Wade? A. Yes, sir.

Q. Did anyone at any time in November come to your house and deliver an order for a trunk? A. Yes, sir.

Q. What date; do you remember? A. I think it was about the second day of November.

Q. Is that the order? (showing to witness) A. Yes, sir; I should say it was.

Q. Did you know the handwriting? A. Yes, sir; I saw Mr. Hilton's handwriting?

Q. You knew it was Mr. Hilton's handwriting? A. Yes, sir.

Q. At the time it was delivered was that sticker on it? That stamp? A. Yes, sir.

Q. Who was it that came with the order; do you remember? A. A young man; I should think he might be about twenty years old; smooth-faced; wore a dark brown suit.

Q. What did he say? A. Said he represented the Boston & Springfield Express Company, and would like to have the trunk; said he would send his expressman for it.

Q. What did you say? A. I said he couldn't have the trunk until Mr. Wade came home. Then Mr. Wade came home, and he sent Corey's Express with that order, and he gave the order to Mr. Wade, and he gave him the trunk.

Q. When did he come first? A. About twelve o'clock.

Q. When did he come again? A. About two-thirty.
Q. And Mr. Wade at that time was in, was he? A. Yes, sir.
Q. Did he leave the order with you when you gave him the trunk? A. No, sir; he didn't.
Q. Who? The expressman? A. Yes, sir.
Q. He gave it to Mr. Wade? A. Yes, sir.
Q. Do you know anything about the garments that were in the trunk? A. No, sir; I didn't see them.

CROSS-EXAMINATION OF JENNIE WADE.

Q. Did this gentleman that came first have on any uniform? A. No, sir.
Q. No cap of any express company or anything of that sort? A. No, sir.
Q. Plain citizen's clothes? A. Yes, sir.

BENJAMIN S. WADE, being duly sworn on behalf of the Plaintiff, testified as follows:

Q. What is your name? A. Benjamin S. Wade.
Q. You live at 593 Broadway, Cambridge? A. Yes, sir.
Q. Mr. Wade, did Mr. Hilton live with you at any time? A. Yes, sir.
Q. When? A. He came there I think it was—well, he came there in March, I think; about eight months altogether.
Q. When he left did he leave anything at your house? A. Left his trunk.
Q. Do you remember anyone calling for that trunk? A. Yes, sir.
Q. What date was that? A. It was the second day of November.
Q. Did the person present any written order for it? A. Yes, sir.
Q. What kind of a looking man? A. Smooth-faced young man. I knew him; he drove for Corey's express over in Cambridge.
Q. What did he say? A. He said he wanted the trunk;

said a young man gave him the order. I said I wanted him to sign the order; he wanted to know what for. I said, for security, so that I would know who I was giving it to. So he signed the order and I gave him the trunk.

Q. Is that his writing on there? A. Yes, sir.

Q. Was that sticker on it when you saw it? A. Yes, sir.

Q. And he took this trunk away with him, this man from Corey's Express? A. Yes, sir.

Q. Did he leave this paper with you? A. Yes, sir.

Q. Did you see anything of the trunk after he took it away? A. No, sir; I did not.

Q. Did you know the handwriting on this order? A. Yes, sir; I did.

Q. Whose? A. Mr. Hilton's.

Q. Did you know anything about the articles in this trunk? A. Yes, sir; I have seen his clothes, because I used to go in his room.

Q. Now this trunk— what was the condition of the trunk? A. Very good; first class.

Q. Would you consider it was almost as good as new? A. I should; yes. It wasn't scratched or marked up any. It was in very good condition.

Q. Was it a large trunk? A. A very large trunk.

Q. Now this overcoat—had you seen it before Mr. Hilton put it away? A. Yes, sir.

Q. What was its condition? A. Very good condition.

Q. Did you see the lady's coat? A. No, I never noticed it.

Q. This gent's suit—worsted? A. Yes, I have seen that.

Q. What was its condition? A. In very good condition.

Q. Did you know that it was Corey's Express Company's team that came for this trunk? A. Yes, sir; I looked at the name on the side of the team, because I wanted to know that the name on the side of the team was the same as signed there.

PLAINTIFF RESTED

CHARLES H. RICHARDSON, being duly sworn on behalf of the Defendant, testified as follows:

Q. What is your name? A. Charles S. Richardson.

Q. What is your residence? A. Springfield.

Q. What is your business? A. Clerk in the express office; Boston & Springfield Express and the Adams.

Q. Are the two companies now occupying the same office? A. They do.

Q. And there is one desk in the office? A. One desk.

Q. How tall a desk is it? A. I couldn't say. It would perhaps come up to here (indicating). It might be five feet.

Q. Do you have a stool? A. Yes, sir; stool.

Q. Do you remember Mr. Hilton coming into the office on November 1? A. Yes, sir; if that is the date; I don't remember the date.

Q. What was said? A. He came in and wanted to know if we could get a trunk for him from Boston, and I said yes, and I gave him an order which he filled out and gave it back to me, and I put it in an Adams Express envelope and placed it on the desk. The conversation which he testified to is about the same as I remember.

Q. Did he ask you if the Boston & Springfield Express Company had an office in Boston? A. He did, and I told him that the Adams Express Company did, but the Boston & Springfield did not. If I may explain that blank, I will say that I keep the stationery separate, but I got hold of the Boston and Springfield paper; I presume I was out of the Adams Express Company paper.

Q. But in the conduct of your business you ordinarily use whichever company's paper is to have charge of the matter? A. Yes, sir.

Q. What did you do with it then? A. I folded it and put it in one of the Adams Express Company's envelopes, addressed to the Company's agent at Boston, Mass.

Q. Did you put any sticker on? Did you stamp it? A. No, sir; I didn't do anything except to seal the envelope.

Q. Connecting carriers have a custom of returning freight by the same route as they get their business in the first place? A. Yes, sir.

Q. What is the route of the Boston & Springfield Express Company? A. Covers all the Old Colony system of the New York, New Haven & Hartford Railroad.

Q. Does it cover Springfield? A. By way of Willimantic.

Q. There is no direct line? A. We do not take Boston matter from Springfield.

Q. In order to get to Springfield it would start from New York on its regular line, and then come by way of Willimantic? A. Yes, sir.

Q. Then what would be the route—what would be the customary route of this order? A. Springfield to Willimantic and Willimantic to Boston.

Q. And from Boston to Charlestown by some local? A. Yes, sir.

Q. Do all the employees of the Boston and Springfield Express Company have a distinctive uniform? A. They have a cap and a badge— metal badge pinned on the front of the cap, reading Boston & Springfield Express Company, with the figure of a dog; the main body of the badge is red. Messengers and drivers wear those badges, not the clerks.

CROSS EXAMINATION OF CHARLES H. RICHARDSON

Q. Did you read this order when it was given to you? A. I presume I did.

Q. You saw that it was written, "Please give the Boston & Springfield Express Company my trunk"; you didn't ask him to alter it? A. No, sir.

Q. You accepted it in that condition without offering any protest? A. Yes, sir.

Q. Now in regard to these stickers—you say you put it in an envelope of the Adams Express Company? A. Yes, sir.

Q. What did you do with it then? A. I put it in what we call a messenger's bag that goes with the messenger on the train.

Q. Put it in a messenger's bag? A. Yes, sir.

Q. Then it was taken by the messenger to the train? A. Yes, sir.

Q. If you were making this contract for the Adams Express Company, why didn't you tell him to make the order out to the Adams Express Company instead of the Boston & Springfield Express Company? A. I didn't tell him anything. I gave him a piece of paper and he wrote it.

Q. And you accepted it in the way it was written? A. Yes, sir.

Q. And you act as agent for both companies? A. Yes, sir.

Q. What is the purpose of this stamp? A. To have the goods returned by the companies that are indicated there.

Q. And that is why the agents and employees of this corporation put this stamp on orders? A. Yes, sir.

(This was objected to by Counsel for Defendant)

Q. Where could that stamp be put on except by the officers in your company? A. By the messengers on the route to Boston.

Q. The messengers that are employed by your company? A. Yes, sir; they carry them on the cars.

Q. Where else might it be done? A. It might be done in Boston.

Q. In one of the offices of your company? A. Possibly; if it gets into an office.

Q. These stickers are not scattered round broadcast through the world? A. Yes, they are; they are scattered through the employees of this company.

Q. But not through employees of other companies? A. They might apply to some other company.

Q. Mr. Hilton called at the office sometime and gave you a copy of this order, after the trunk was lost? A. Yes; he did.

Q. Did you put a stamp on it? A. I don't know; I won't swear as to that. I know a copy was made for Mr. Curtis. I think possibly I did when Mr. Curtis was there.

Q. How many orders did you take that day? A. I could not tell you sir. I have no idea whether it was one or ten.

Q. And you are agent for this Boston & Springfield Express Company as well as the other companies; and the Boston & Springfield Express Company are common carriers of goods, are

they—trunks and all kinds or merchandise? A. I presume they are; yes.

Q. And you remember Mr. Hilton's calling and asking you when he called, if that was the office of the Boston & Springfield Express Company? A. Yes, sir.

Q. And if there was an office in Boston? A. I told him that there was an office of the Adams Express there.

Q. Are you sure that you didn't tell him that the Boston & Springfield had an office there? A. Very positive, sir; because I had no object in telling him that.

Q. Was there anyone in the office then? A. I could not say.

Q. Were you busy that day? A. Busy most of the time.

Q. A great many people come in and out during the day? A. Oh, we have a few during the day.

Q. All kinds of questions are fired at you—have you got a distinct remembrance of the conversation with Mr. Hilton? A. Pretty sure; not sure of every word; he came in so many times inquiring about it we got to be old acquaintances.

REDIRECT EXAMINATION OF CHARLES H. RICHARDSON.

Q. Do local companies have these stickers, Mr. Richardson. A. Oh, yes; all express companies do.

Q. Who is Mr. Curtis? A. He is Superintendent of the Adams Express Company.

Q. Do you know whether or not the Boston & Springfield Express Company and the Adams Express Company are one and the same corporations, or two distinct corporations? A. Two distinct corporations. All accounts are kept separate.

(Counsel for Defendant) I want to put in this letter.

(Counsel for Plaintiff) I object. I think it ought to have been offered when Mr. Hilton was on the stand, so that I could ask him about it.

(Counsel for Defendant) I don't object to your inquiring of him about it.

(Counsel for Plaintiff) All right, then; put it in.

(Counsel for Defendant read the letter from Mr. Hilton to Mr. Curtis.)

DEFENDANT RESTED.

HUGH HILTON, the Plaintiff, being recalled, testified as follows.

Q. (Counsel for Plaintiff) What induced you to write to Mr. Curtis as Superintendent of both companies, when he said that the Boston & Springfield and Adams Express Company are one. I corresponded with Mr. Curtis, and that is why I wrote the letter to him. I wrote several letters to him.

Q. (Counsel for Defendant) Aren't you stretching that a little when you said this? A. I asked the question, who I should correspond with. He said, "Mr. Curtis, the Superintendent." I asked him how was that; I sent the order by the Boston & Springfield Express Company; and he said that the Boston & Springfield and the Adams Express Company were the same company.

EVIDENCE CLOSED.

(The Court gave permission to the Counsel for Plaintiff to amend the declaration.)

CHARGE TO THE JURY.

Mr. Foreman and Gentlemen:

The consideration given by the Court to the questions in this case will simplify the presentation of the case to you, so that although there are questions in the case which have been the occasion of some consideration upon the part of the Court as to what should be presented to you, yet the questions which you will have to determine in the case are simple, and I hope they will be plain to your minds.

This is a contract of insurance by an association called a fraternal beneficiary association with an individual, a person who is a member of the association. This association is doubtless organized for social purposes largely and perhaps mainly, and a great many of its members are not insured, as I understand. Many of its members are members simply for the purposes of social intercourse with their other associates and fellows, and there is no question of pecuniary benefit for death or insurance in their cases; but there is a rank or department or branch which secures insurance to those who are in that rank and who have conformed to the requirements preliminary to the obtaining of that insurance.

Now the question here simply is whether the requirement which was necessary in order to obtain this insurance existed, and whether you find that the necessary requirements existed here in order that the plaintiff should recover.

The plaintiff is the administrator of the estate of Henry H. Wise.

This insurance was for the benefit of Mrs. Wise, the wife of the deceased, the insured. She died before he did; but if the insurance is valid and binding it may be recovered by the administrator of the deceased for the benefit of those who succeed to the right to the money. Now the question is whether the insurance was valid or binding. All insurance generally is contingent upon something. A person is insured against injury or from loss by fire or loss by accident, or so that upon his death there accrues to those who are called beneficiaries, somtimes his own heirs merely, sometimes individuals, the right to the recovery of a certain sum of

money. Any class of insurance is based upon some requirements, some conditions. To illustrate what I mean, there can be no such thing as fire insurance of a building or a house which is in such condition that fire will inevitably occur or is likely to occur, or under such conditions as will leave the insured at liberty to destroy his own house or building by fire. I put that extreme case by way of illustration.

Take the question of life insurance or the insuring of a person's life. It is always based upon certain conditions as to health, always based upon certain examinations of physicians, always based upon certain representations made by the insured to the company. Now in this case the questions that you will consider relate to two answers in this application. This paper which I have in my hand is the application of Henry H. Wise. Upon the strength of the application the certificate of insurance was issued. The application contains a large number of questions. and a large number of answers, most of which you need not consider, most of which are not in question, and the contention here on the part of the defendant is in relation to two questions principally; First: "Have you ever had or have you now any other disease or infirmity than those above mentioned?" Second: "Have you ever met with any accident or personal injury or undergone any surgical operation?" Both of these questions were answered No by Mr. Wise.

Now I rule to you as a matter of law that whether you should find for the plaintiff or not in this case depends upon the truthfulness or correctness of those answers. If you find that those answers were untrue, the plaintiff cannot recover. If you find that those answers were true, the plaintiff may recover.

Now take the first question: "Have you ever had or have you now any other disease or infirmity than above mentioned?" The "above mentioned" diseases or infirmities are contained in a list which you will have with you. They begin with A and go down alphabetically through a considerable list of diseases and troubles which afflict the human frame. There is then this: Have you had any disease?" He says No. Had he? Neuralgia is not mentioned in that list. "Have you had other than those mentioned in that list?" He has answered that he didn't have those diseases, and

then the succeeding question is, "Have you ever had any disease or infirmity other than above mentioned?" The defendant says he did, that he had obstinate neuralgia, and that was a disease. Now that is the question which you are find on. There has been testimony upon that question here. Medical men have been on the stand. Physicians have testified, and you will take careful consideration of their testimony and what they have said, and give it such weight as you think you should. The members of the family have been upon the stand, some of them, and they have testified with reference to Mr. Wise's condition and state of health.

Now, you are not to decide this case by some other case. You are not to reason in a way which will carry you to an absurd extreme in either direction. Because you would not call a trifling ailment a disease, it does not follow that you should not call neuralgia a disease.

On the other hand, if you are forced to say, if you must say, that a serious case of disease, whatever may be the character of it and whatever may be the nature of it, is something different from neuralgia, it does not follow from that necessarily that neuralgia is a disease; but is neuralgia a disease? and is neuralgia such as Mr. Wise had a disease? Perhaps you would not say if a man had neuralgia—and I am putting this by way of illustration—that if a man had neuralgia for a day and never had it again and never had it before, perhaps you would not say that that was a disease. Perhaps you would say that if he had severe and obstinate neuralgia continually and for a considerable period of time, that was a disease. Now I am putting two extremes. The evidence in this case you have before you. I have no right to comment upon it except to call your attention to it; no right to comment upon it in such a way as to indicate an opinion; only the right to comment upon it in such a way as to call it to your attention and present the facts to you so that you can better deal with them. Was this neuralgia as he had it a disease?

Well, if he had neuralgia, and if it was a disease, before the month of May, 1886, when he was insured, that vitiates the insurance, because he said he didn't have a disease.

Now, I ought, perhaps, to call your attention to another phase

of this matter, and I can do it best, I think, by stating very briefly this: That in the view which I take of the law the tendency of a disease, if he had a disease, to shorten life or affect the risk is not involved in this question and has nothing to do with this issue. There are certain statutes in the Commonwealth which might involve that question. I do not think they relate to this class of insurance. The question here is whether those questions which were answered were answered truly or not, and as to this question which I have been discussing, "Have you ever had or have you now any other disease or infirmity than those diseases above mentioned?" the question is whether he had ever had a disease. What a disease is is for you to say. You are to say it intelligently upon the testimony given you here, upon the intelligent consideration of the testimony of the physicians, and of the members of the family, as to his condition. You are to say whether he ever had a disease, and whether this condition of neuralgia which was upon him was a disease.

If you find that it was, it vitiates the policy. If you find that was not, and he answered truly, it does not vitiate the policy.

Now I say the same to you with reference to the other question. Have you ever undergone any surgical operation?" He says No. He says he had never undergone any surgical operation. The defendant says that several years before he had undergone the surgical operation of having his jaw perforated and having the ends of the nerve or nerves going down through the face here (indicating) and communicating with the mouth and teeth, exposed and cut off by a physician, by a surgeon; and the defendant says, "What is that but a surgical operation?" That is the claim of the defendant here. If that was a surgical operation which had taken place before 1886, it vitiates the policy, because he answered that there was no surgical operation which had been performed upon him.

But the plaintiff says that is not a surgical operation; that is no more than might occur from an operation upon the teeth. Neuralgia in the face is but an aggravation of a serious disturbance of the teeth, and it does not come to the character of a surgical operation. Well, gentlemen, was it a surgical operation or was it not? Do not minimize, do not magnify, do neither, go to neither extreme.

The physicians have testified to you as to what took place and there is their evidence. You are not to exaggerate, you are not to diminish the character of this which was done to his face. You are to use your common sense, your judgment. When we speak of a surgical operation, what do we mean? You have about as good an comprehension of what is meant by a surgical operation as you would have after any definition which I might give you. You speak of some friend having had some surgical operation, or you might say such a man had trouble, and speak of something which was done to him which you would not think was a surgical operation. Now, to bore through the jaw or to make an incision through the jaw, pick up the ends of a nerve and cut off the ends of the nerve by a physician or surgeon who acts with a knife upon a human body, what is that? Is that a surgical operation? That is for the jury to say. The court must not say.

In order that there may be no doubt about this, when you bring in your verdict, I have written two questions here which you will answer over the signature of the foreman. Ordinarily you would return a verdict and nothing more, but in this case—for the sake of explicitness—it is better that you answer these questions. The first is: "Had Henry H. Wise, the insured, any other disease than those mentioned in the application at the time of the application or prior thereto?" Second: "Had he prior to that time undergone any surgical operation?"

Now, gentlemen, as you answer those questions so you will return your verdict. If you answer both of them No, you will be at liberty to return for the plaintiff. If you return a verdict for the plaintiff, you will return a verdict for the sum of three thousand dollars with interest upon it from the date of the writ. You will have the writ with you and can reckon interest at six per cent. from the date of the writ. But if you answer those questions, or either or them, Yes, if you say that he did have a disease prior to that time other than those mentioned in the application, or that he did undergo prior to that time a surgical operation, then you will return a verdict for the defendant. If you answer either of the questions in the affirmative, the verdict will be for the defendant. If you you answer both of those in the negative, your verdict will be for

the plaintiff, and you will return a verdict, of course, in addition to the answer.

COUNSEL FOR DEFENDANT. We take exception as to the first request for ruling, and upon the whole evidence.

COUNSEL FOR PLAINTIFF. In addition to the requests for ruling, I would like an exception to that part, "I rule to you as a matter of law."

THE COURT. With reference to the statutes?

COUNSEL FOR PLAINTIFF. Yes, sir; and also the note that you made there with reference to the exclusion of the matter of that part of the contract bearing upon the question of reasonable belief and upon the matter of the expectancy of life.

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